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STEPHANIE A. HOFF
ADMINISTRATIVE CODE EDITOR

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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

Attorney General[61]

Replace Analysis
Insert Chapter 36

Engineering and Land Surveying Examining Board[193C]

Replace Chapter 5

Iowa Finance Authority[265]

Replace Chapter 32

Public Health Department[641]

Remove Reserved Chapter 79

Public Safety Department[661]

Replace Chapter 500
Replace Chapter 502

Regents Board[681]

Replace Analysis
Replace Chapter 3

Revenue Department[701]

Replace Analysis
Replace Chapter 18
Replace Chapter 26
Replace Reserved Chapters 220 to 224 with Reserved Chapters 220 to 223
Insert Chapter 224

ATTORNEY GENERAL[61]*DEPARTMENT OF JUSTICE*

Editorially transferred from [120] to [61], IAC Supp. 1/28/87

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CHAPTER 36
DISCLOSURE STATEMENT OF REPAIRS OR ADJUSTMENTS TO, OR REPLACEMENTS OF
PARTS WITH NEW PARTS ON, NEW MOTOR VEHICLES

61—36.1(321) New motor vehicle repair or parts replacement disclosure requirement. A person licensed as a new motor vehicle dealer pursuant to Iowa Code chapter 322 is required to disclose to the buyer or lessee of a new motor vehicle that the vehicle has been subject to any repairs or adjustments, or replacements of parts with new parts, if the actual cost of any labor or parts charged to or performed by the dealer for any such repairs, adjustments, or parts exceeds 4 percent of the dealer's adjusted cost. [ARC 9806B, IAB 10/19/11, effective 11/23/11]

61—36.2(321) Definitions.

"Dealer's adjusted cost" means the amount paid by the dealer to the manufacturer or other source for the vehicle, including any freight charges, but excluding any sum paid by the manufacturer to the dealer as a holdback or other monetary incentive relating to the vehicle.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Motor vehicle" means a vehicle which is self-propelled and not operated upon rails.

"New motor vehicle" means a motor vehicle subject to registration which has not been sold "at retail" as defined in Iowa Code chapter 322. [ARC 9806B, IAB 10/19/11, effective 11/23/11]

61—36.3(321) Form and format of required disclosure statement.

36.3(1) The disclosure statement required by this rule shall be made in writing, to a buyer or lessee, at or before the time of sale or lease to the buyer or lessee and shall include the following statement, in at least 14-point type:

Iowa law requires new motor vehicle dealers to disclose to their customers when a new vehicle the dealer offers for sale or lease has been subject to prior repairs or adjustments, or has had parts replaced with new parts, when the cost of that repair, adjustment or replacement is more than 4% of the dealer's adjusted cost for the vehicle. This new vehicle has had repairs, or has had parts adjusted or replaced, as follows:

[Dealer: Check all that apply, and fully describe all repairs, adjustments or part replacements.]

Repair(s) to the following part(s): _____

Adjustment(s), as follows: _____

Replacement(s) of the following part(s): _____

36.3(2) The disclosure statement shall also include all of the following:

- a. The year, make, model and vehicle identification number of the vehicle;
- b. The signature of the buyer or lessee;
- c. The name and address of the dealership;
- d. The signature of a dealer representative authorized to legally bind the dealership;
- e. The dates on which the above signatures were affixed to the document.

36.3(3) The disclosure required pursuant to this rule shall be made clearly and conspicuously, shall include no writing except as required by this rule, and shall be made in either of the following ways:

- a. On a separate 8½" × 11" white piece of paper; or
- b. Via electronic means, with the electronic signatures of all parties required to sign the disclosure pursuant to this rule.

[ARC 9806B, IAB 10/19/11, effective 11/23/11]

61—36.4(321) Buyer or lessee to be given opportunity to review disclosure statement. The dealer shall give the buyer or lessee an adequate opportunity to review the disclosure statement before asking the buyer or lessee to sign the disclosure statement.

[ARC 9806B, IAB 10/19/11, effective 11/23/11]

61—36.5(321) Copy of disclosure statement to buyer or lessee. The dealer shall give a copy of the fully completed and signed disclosure statement to the buyer or lessee to retain at the time the statement is fully completed and signed. This requirement may be met by providing the buyer or lessee with a paper copy, including but not limited to a computer-generated printout, or by directing the disclosure statement in electronic form to an E-mail address of the buyer's or lessee's choosing and in a format that is accessible to the buyer or lessee. The manner in which a copy of the disclosure statement is to be provided to the buyer or lessee pursuant to this rule shall be at the discretion of the buyer or lessee.

[ARC 9806B, IAB 10/19/11, effective 11/23/11]

61—36.6(321) Record retention requirement. A dealer shall retain a paper or electronic copy of each written disclosure issued pursuant to this chapter for five years from the date of issuance.

[ARC 9806B, IAB 10/19/11, effective 11/23/11]

61—36.7(321) Substantially similar disclosure statements. Disclosure statements that are substantially similar to the statement required by this chapter will be permitted with the prior approval of the attorney general.

[ARC 9806B, IAB 10/19/11, effective 11/23/11]

These rules are intended to implement 2011 Iowa Acts, Senate File 418.

[Filed ARC 9806B (Notice ARC 9669B, IAB 8/10/11), IAB 10/19/11, effective 11/23/11]

CHAPTER 5
LAND SURVEYING LICENSURE
[Prior to 11/14/01, see 193C—1.4(542B)]

193C—5.1(542B) Requirements for licensure by examination. The specific requirements for initial licensing in Iowa are established in Iowa Code section 542B.14, and it is the board's intention to issue initial licensure only when those requirements are satisfied chronologically as set forth in the statute.

5.1(1) First, the applicant for initial licensure in Iowa must satisfy the education plus experience requirements as follows: graduation from a course of two years or more in mathematics, physical sciences, mapping and surveying, or engineering in a school or college and six years of practical experience, all of which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental land surveying subjects.

a. The six-year experience requirement above may be reduced based upon the number of years of the degree program from which the applicant graduated. Refer to the chart at 5.1(6).

b. Internet or on-line degrees will only be considered as qualifying degrees if the institution issuing the degree is accredited by a recognized accreditation board.

5.1(2) Second, the applicant must successfully complete the Fundamentals of Land Surveying examination.

a. The applicant may take the Fundamentals of Land Surveying examination anytime after the education and experience requirements described above are completed, but the applicant must successfully complete the Fundamentals of Land Surveying examination prior to taking the Principles and Practice of Land Surveying examination.

b. College seniors studying an Accreditation Board of Engineering and Technology (ABET) or Canadian Engineering Accreditation Board (CEAB) approved curriculum may take the Fundamentals of Land Surveying examination during the final academic year; applicants will be permitted to take the examination during the testing period which most closely precedes anticipated graduation. However, an official transcript from the applicant's college or university verifying that the applicant graduated must be sent by the registrar to the board office before an applicant's examination results will be released.

5.1(3) Third, the applicant must successfully complete the Principles and Practice of Land Surveying examination.

a. To qualify to take this examination, the applicant must present a record of four years or more of practical experience in land surveying work which is of a character satisfactory to the board. This experience must have been obtained after the receipt of the qualifying education and prior to the application due date for the examination. This practical experience is in addition to the initial experience required prior to taking the Fundamentals of Land Surveying examination.

b. An applicant for the Principles and Practice of Land Surveying examination shall have a minimum of one year of practical experience in the United States of America or a territory under its jurisdiction.

5.1(4) Work project description. An applicant for initial licensure as a professional land surveyor must include with the application a statement of approximately 200 words describing a significant project on which the applicant worked closely during the last 12 months. The statement shall describe the applicant's degree of responsibility for the project and shall identify the project's owner and its location. The statement shall be signed and dated. Criteria the board shall use in evaluating the acceptability of the project as qualifying experience for the applicant shall include, but not be limited to, the following:

a. The degree to which the project and the experience described has progressed from assignments typical of initial assignments to those more nearly expected of a licensed professional;

b. The scope and quality of the professional tutelage experienced by the applicant;

c. The technical decisions required of the applicant in the project; and

d. The professional decisions required of the applicant.

The board reserves the right to contact the employer and the person providing tutelage on the project for information about the project experience presented to the applicant.

5.1(5) References. References are required for any applicant that must meet an experience requirement prior to taking an examination.

a. An applicant for the Principles and Practice of Land Surveying examination shall submit five references on forms provided by the board.

(1) At least three of the five references shall be from licensed professional land surveyors.

(2) If the applicant has had more than one supervisor, at least two of the references shall be from a supervisor of the applicant.

(3) If an applicant has had professional experience under more than one employer, the applicant shall provide references from individuals with knowledge of the work performed under a minimum of two employers.

(4) The board reserves the right to contact employers for information about the applicant's professional experience and competence or to request additional references.

b. An applicant for the Fundamentals of Land Surveying examination must provide three references on forms provided by the board except that: (1) individuals applying with an ABET/EAC or CEAB accredited engineering or surveying and mapping degree with at least six semester hours of surveying or mapping do not have an experience requirement and, therefore, do not need to provide references; and (2) individuals applying with a non-ABET/EAC four-year surveying and mapping degree must submit only one reference.

5.1(6) Education and experience requirements. The board will require the minimum number of years set forth on the following chart before an applicant will be permitted to take either the Fundamentals of Land Surveying or the Principles and Practice of Land Surveying examination. Column 1 indicates the years of practical experience required prior to the Fundamentals of Land Surveying examination in addition to the completion of the required educational level. To determine the total years of practical experience required prior to taking the Principles and Practice of Land Surveying examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR EXAMINATION APPLICANTS		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Land Surveying examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Land Surveying examination:
A college or technology program with fewer than 6 semester hours of surveying		
Two-year degree	6	4
Four-year degree	4	4
A college or technology program with 6 or more semester hours of surveying		
Two-year degree	6	4
Four-year degree	2	4
Engineering program and 6 semester hours of surveying		
Two-year degree	6	4
Four-year BS degree	0	4
Engineering program with fewer than 6 semester hours of surveying		
Two-year degree	6	4
Four-year BS degree	2	4

EXPERIENCE REQUIREMENTS FOR EXAMINATION APPLICANTS		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Land Surveying examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Land Surveying examination:
Nonaccredited surveying and mapping program		
Two-year degree	6	4
Four-year BS degree	1	4
Accredited surveying and mapping program		
Two-year degree	6	4
Four-year BS degree	0	4

5.1(7) Practical experience requirements. Practical land surveying experience is required prior to licensing. The purpose of this requirement is to ensure that the applicant has acquired the professional judgment, capacity and competence to determine land boundaries. The following criteria will be considered by the board in determining whether an applicant's experience satisfies the statutory requirements.

a. Quality. Experience shall be of such quality as to demonstrate that the applicant has developed technical skill and initiative in the correct application of surveying principles. Such experience should demonstrate the capacity to review the applications of these principles by others and to assume responsibility for surveying work of a professional character. Up to three years of practical experience obtained after high school graduation and prior to satisfying the education requirement, if under the tutelage of a professional land surveyor, may be accepted toward the additional experience requirement for qualification to take the Fundamentals of Land Surveying examination. A minimum of four years of an applicant's experience after satisfying the education requirement shall be under the tutelage of a professional land surveyor.

b. Scope. Experience shall be of sufficient breadth and scope to ensure that the applicant has attained reasonably well-rounded professional competence in land surveying.

c. Progression. The record of experience shall indicate successive and continued progress from initial work of simpler character to recent work of greater complexity and higher degree of responsibility, as well as continued interest and effort on the part of the applicant toward further professional development and advancement.

d. Advanced education and military experience. An applicant's advanced education, military experience, or both will be reviewed in order to determine if they are applicable toward the statutory requirements for experience.

e. Joint applications. Applicants requesting licensure both as professional engineers and land surveyors must submit a history of professional experience in both fields. Such histories will be considered separately on a case-by-case basis. The board does not grant full credit for concurrent experience in both professions.

5.1(8) Required examinations. The board prepares and grades the Iowa State Specific Land Surveying examination administered to professional land surveyor candidates. All other examinations are uniform examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES). The board may negotiate an agreement with an examination service to administer the examinations to applicants approved by the board, in which case applicants shall pay examination fees directly to the service.

a. Fundamentals examination. The Fundamentals of Land Surveying examination is a written, eight-hour examination covering general surveying principles.

b. Interview. One or more of the land surveyor members of the board must conduct an interview with each applicant for the professional land surveying examination prior to the examination. This

interview is to verify the applicant's knowledge and experience in the principles and practice of land surveying in Iowa. The applicant is required to bring to the oral interview samples of the applicant's work which include surveying plats, subdivision plats, acquisition plats, corner certificates, and related field notes. The applicant is expected to have knowledge in the following: conduct of original surveys, restoration of obliterated corners, reestablishing of lost corners, retracement work and how to use evidence in restoration of obliterated land lines as well as corners, laws governing riparian rights, accretions, adverse possession, acquiescence, and Iowa laws regarding minimum standards for surveying, platting and corner certification. An applicant will not be permitted to write the examination without successfully verifying experience through the interview process.

c. Professional land surveying examinations. The Principles and Practice of Land Surveying examination consists of two examinations. The first is a six-hour examination designed to determine general proficiency and qualification to engage in the practice of land surveying. The second part is a two-hour Iowa State Specific closed-book examination that is designed to determine an applicant's proficiency and qualification to practice land surveying specifically in Iowa. Each of the two examinations shall be scored separately.

d. Passing scores. The board reviews test results for each examination and determines what level shall constitute a minimum passing score for that examination. In making its determination, the board generally is guided by the passing score recommended by the NCEES. The board fixes the passing score for each examination at a level which it concludes is a reasonable indication of minimally acceptable professional competence.

e. Reexamination. An applicant who fails an examination may request reexamination at the next examination period without reapplication.

(1) If the applicant intends to retake the examination, the applicant must notify the examination service selected by the board to administer the examinations prior to the application due date for the examination.

(2) Applicants failing one or both parts of the professional land surveying examination will be required to retake only the failed portions. An applicant successful in passing one portion of the land surveying examination need not be reexamined for that portion regardless of how much time elapses between the successfully passed portion and any future appearance to retake the failed portion of the examination. A satisfactory score must be obtained on each portion of the examination before the board will grant licensure as a land surveyor.

(3) An applicant for licensure as a land surveyor in Iowa (by comity or examination) that needs to be examined only for the state-specific portion of the professional land surveying examination may take the examination at the board office by appointment in accordance with all other requirements.

(4) An applicant who has failed two consecutive examinations of the state-specific portion of the professional land surveying examination shall not be allowed to retake the state-specific portion for the next two years in order for the applicant to acquire the necessary skill and knowledge to successfully pass the examination.

f. Failure to appear. An applicant who fails to appear for an examination may sit for the examination the next time it is offered without reapplication provided the application will not be more than one year old at the time of the application due date for the examination and the applicant notifies the board office prior to the application due date for the examination.

g. Materials permitted in examination room. For security reasons, applicants shall comply with requirements regarding materials permitted in the examination room as issued by the National Council of Examiners for Engineering and Surveying and provided to candidates prior to the examination.

h. Release of examination results. Results of any examination shall only be reported as pass or fail except that the candidate who fails an examination may be provided with the candidate's converted score and a diagnostic report indicating areas of weakness, as available.

5.1(9) Examination subversion. Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of licensure in Iowa, be barred from land surveying licensure and examinations in Iowa, or be subject to the imposition of other sanctions the board deems appropriate.

a. Conduct that subverts or attempts to subvert the examination process includes, but is not limited to:

(1) Conduct that violates the security of the examination materials, such as removing from the examination room any of the examination materials; reproducing or reconstructing any portion of the licensing examination; aiding by any means in the reproduction or reconstruction of any portion of the licensing examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(2) Conduct that violates the standards of test administration, such as communicating with any other examination candidate during the administration of the licensing examination; communicating with others outside of the examination site during the administration of the examination; copying answers from another candidate or permitting one's answers to be copied by another candidate during the administration of the examination; or having in one's possession during the administration of the licensing examination any device or materials that might compromise the security of the examination or examination process, such as calculating and computing devices not on the list of devices approved by the examination provider or provided by the examination provider.

(3) Conduct that violates the examination process, such as falsifying or misrepresenting educational credentials or other information required for admission to the licensing examination or impersonating an examination candidate or having an impersonator take the licensing examination on one's behalf.

b. Any examination candidate who wishes to appeal a decision of the board under this subrule may request a contested case hearing. The request for hearing shall be in writing, shall briefly describe the basis for the appeal, and shall be filed in the board's office within 30 days of the date of the board decision that is being appealed. Any hearing requested under this subrule shall be governed by the rules applicable to contested case hearings under 193—Chapter 7.

[ARC 9805B, IAB 10/19/11, effective 11/23/11]

193C—5.2(542B) Requirements for licensure by comity. A person holding a certificate of licensure to engage in the practice of land surveying issued by a proper authority of a jurisdiction or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of Iowa Code section 542B.14 and of a standard not lower than that specified in the applicable licensure Act in effect in this jurisdiction at the time such certificate was issued may, upon application and successful completion of the Iowa State Specific Land Surveying examination, be licensed without further examination. When determining whether the licensing standards satisfied by a comity applicant at time of foreign licensure are equal or superior to those required in Iowa, the board considers each of the four licensing prerequisites in Iowa Code section 542B.14(1) individually. The licensing standards satisfied by the comity applicant must accordingly have been equal or superior to those required in Iowa for education, fundamentals examination, experience, and professional examination. Unless expressly stated in this chapter, the board will not consider an applicant's superior satisfaction of one licensing prerequisite, such as a higher level of education than is required in Iowa, as resolving an applicant's lack of compliance with another prerequisite, such as professional examination. Comity applicants are governed by the same standards as are required of Iowa applicants.

5.2(1) References. An applicant for licensure by comity shall submit three references on forms provided by the board, at least two of which shall be from licensed professional land surveyors. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

5.2(2) Basis for evaluation of applications. Applications for licensure by comity will be evaluated on the following basis:

a. The applicant's record of education, references, practical experience, and successful completion of approved examinations will be reviewed to determine if it currently satisfies the substantive requirements of Iowa Code section 542B.14. In reviewing the education, references, and practical experience of comity applicants, the board will use the same criteria used by the board to determine the eligibility of a candidate for the Principles and Practice of Land Surveying examination; or

b. The applicant's licensure in a jurisdiction other than Iowa will be reviewed to determine if it was granted only after satisfaction of requirements equal to or more stringent than those that were required by Iowa Code section 542B.14 at the time the applicant was licensed in the other jurisdiction.

5.2(3) Evaluation of comity application process.

a. First, the applicant for licensure by comity from a jurisdiction other than Iowa must have satisfied the education and experience requirements as set forth in Iowa Code section 542B.14 that were in effect at the time that the applicant was licensed initially.

b. Second, the applicant must have successfully completed the Fundamentals of Land Surveying examination. The applicant may take the Fundamentals of Land Surveying examination anytime after the practical experience and educational requirements are completed, but the applicant must successfully complete the Fundamentals of Land Surveying examination prior to taking the Principles and Practice of Land Surveying examination.

c. Third, the applicant must have successfully completed the Principles and Practice of Land Surveying examination. Prior to taking this examination, the applicant shall have had a record of four years or more of practical experience in land surveying which is of a character satisfactory to the board.

d. While the board will consider evidence presented by a comity applicant on non-NCEES examinations successfully completed in a foreign country, the non-NCEES examination will be compared with the appropriate NCEES examination. A non-NCEES professional examination, for instance, must be designed to determine whether a candidate is minimally competent to practice professional land surveying. The examination must be written, objectively graded, verifiable, and developed and validated in accordance with the testing standards of the American Psychological Association or equivalent testing standards. Free-form essays and oral interviews, while valuable for certain purposes, are not equal or superior to NCEES examinations for reasons including the subjective nature of such procedures, lack of verifiable grading standards, and heightened risk of inconsistent treatment.

5.2(4) Education and experience requirements. The board will employ the following chart to determine if the applicant's licensure in a jurisdiction other than Iowa was granted after satisfaction of requirements equal to or more stringent than those that were required by Iowa Code section 542B.14 at the time the applicant was licensed in the other jurisdiction. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Land Surveying examination in addition to the completion of the required educational level. To determine the total years of practical experience that were required prior to taking the Principles and Practice of Land Surveying examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Land Surveying examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Land Surveying examination:
No post-high school education	8	4
College or technology program with fewer than 6 semester hours of surveying		
One year	7	4
Two years	6	4
Three years	5	4
Four-year degree	4	4
College or technology program with 6 or more semester hours of surveying		
One year	7	4

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Land Surveying examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Land Surveying examination:
Two years	5.5	4
Three years	4	4
Four-year degree	2.5	4
Engineering program with 6 semester hours of surveying		
One year	7	4
Two years	5.5	4
Three years	4	4
Four-year BS degree	1.5	4
Nonaccredited surveying and mapping program		
One year	7	4
Two years	5	4
Three years	3	4
Four-year BS degree	1	4
Accredited surveying and mapping program		
One year	7	4
Two years	4	4
Three years	2	4
Four-year BS degree	0	4

These rules are intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15 and 542B.20.

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CHAPTER 32
IOWA JOBS PROGRAM

265—32.1(16) Purpose. The Iowa jobs board is charged by the Iowa legislature and the governor with establishing, overseeing and providing approval of the administration of the Iowa jobs program. The board will encourage and support public construction projects relating to disaster relief and mitigation and to local infrastructure.

[ARC 7941B, IAB 7/15/09, effective 6/15/09]

265—32.2(16) Definitions. When used in this chapter, the following definitions apply unless the context otherwise requires:

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

“*Board*” means the Iowa jobs board as established in 2009 Iowa Acts, Senate File 376, section 5.

“*Disaster*” means the severe storms, tornadoes, and flooding that occurred in Iowa between May 25, 2008, and August 13, 2008, and designated by FEMA as FEMA-1763-DR; additionally, the Iowa jobs board may, by resolution, designate an event that occurs subsequent to June 15, 2009, as a disaster.

“*Financial feasibility*” means the ability of a project, once completed, to be maintained and operated for its useful life with funds either generated by the project itself or from an identifiable source of funds available for such purpose.

“*Future flood prevention*” means measures intended to mitigate or lessen the damages caused by future flooding.

“*Indirect jobs*” means jobs created by suppliers of materials used in the construction or operation of the project.

“*Induced jobs*” means jobs collaterally created throughout the economy by a project as employed workers and firms buy other goods and services.

“*Iowa jobs program review committee*” or “*review committee*” means the committee established by 2009 Iowa Acts, Senate File 376, section 9(2), and constituted as described in this chapter.

“*Local infrastructure*” means:

1. Projects relating to disaster rebuilding;
2. Reconstruction and replacement of local public buildings;
3. Flood control and flood protection; and
4. Future flood prevention.

“Local infrastructure” does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

“*Local support*” means endorsement of a proposed project by local individuals, organizations, or governmental bodies that have a substantial interest in a project.

“*Program*” means the Iowa jobs program established in 2009 Iowa Acts, Senate File 376, sections 5 to 12.

“*Public construction project*” means a project for the construction of local infrastructure by a county, city, or public organization.

“*Public organization*” means a nonprofit organization that sponsors or supports the public needs of one or more local Iowa communities and that was in operation prior to January 1, 2009; provided that (1) such organization is described in Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code and is exempt from federal tax under Section 501(a) of the Internal Revenue Code, and (2) such organization is determined by the board not to be affiliated with or controlled by a for-profit organization.

“*Recipient*” means an entity under contract with the Iowa jobs board to receive Iowa jobs funds and undertake a funded project.

“*Sustainability*” means the use, development, and protection of resources at a rate and in a manner that enables people to meet their current needs while allowing future generations to meet their own needs; “sustainability” requires simultaneously meeting environmental, economic and community needs.

[ARC 7941B, IAB 7/15/09, effective 6/15/09]

265—32.3(16) Allocation of funds. All Iowa jobs funds shall be awarded and used as specified in 2009 Iowa Acts, Senate File 376, and these rules. Any portion of an amount allocated for projects that remains unexpended or unencumbered one year after the allocation has been made by the board may be reallocated by the board to another project category, at the discretion of the board. All bond proceeds shall be expended within three years from when the allocation was initially made. The total amount of allocations for future flood prevention, reconstruction and replacement of local public buildings, disaster rebuilding, flood control and flood protection projects (pursuant to the local infrastructure competitive grant program) shall not exceed \$165 million for the fiscal year beginning July 1, 2009.
[ARC 7941B, IAB 7/15/09, effective 6/15/09]

265—32.4(16) Local infrastructure competitive grant program. The board shall assist in the development and completion of public construction projects relating to disaster relief and mitigation and to local infrastructure by overseeing and providing approval of the administration of a local infrastructure competitive grant program, as set forth herein.

32.4(1) Iowa jobs program review committee. The Iowa jobs program review committee shall comprise five members, consisting of the following members of the Iowa jobs board: three of the general public members, as appointed to the review committee by the Iowa jobs chair, the executive director of the Iowa finance authority (or designee), and the director of Iowa workforce development (or designee). The review committee shall comply with Iowa Code chapter 21 and with Iowa Code sections 69.16 and 69.16A. From its public members, the review committee shall elect a chair and a vice chair. Two-thirds of the review committee members eligible to vote shall constitute a quorum authorized to act in the name of the review committee.

32.4(2) Eligible applicants. Eligible applicants for Iowa jobs local infrastructure competitive grant program funds shall be Iowa cities, Iowa counties, and public organizations.

32.4(3) Eligible projects and forms of assistance. For a project to be eligible to receive a competitive grant from the board, the project must be a public construction project in the state of Iowa with a demonstrated substantial local, regional, or statewide economic impact. Financial assistance shall be awarded only in the form of grants. An applicant for a competitive grant shall not receive more than \$50 million in financial assistance from the Iowa jobs restricted capitals fund.

a. Any award of a competitive grant to a project shall be limited as follows:

(1) Up to 75 percent of the total cost of a project for replacing or rebuilding existing disaster-related damaged property; or

(2) Up to 50 percent of the total cost for all other projects.

b. The authority, with the approval of the chair and vice chair of the Iowa jobs board, shall have the ability to make technical corrections to an award that are within the intent of the terms of a board-approved award.

32.4(4) Ineligible projects. The board shall not approve an application for a competitive grant for either of the following purposes:

a. To refinance a loan existing prior to the date of the initial financial assistance application.

b. For a project that has previously received financial assistance under the local infrastructure competitive grant program, unless the applicant demonstrates that the financial assistance would be used for a significant expansion of such a project.

32.4(5) Threshold application requirements. To be considered for a competitive grant, an application shall meet all of the following threshold requirements:

a. Prior to filing an application, the applicant must file, on the form and in the manner prescribed by the authority, a notice of intent to apply not less than 20 days prior to submitting its application;

b. The application must be submitted by an eligible applicant, must be complete and on forms or in the format specified for such purpose by the authority (the authority may, in its discretion, require the use of a Web-based application format), and must be received by the authority by the applicable deadline;

c. The proposed project must be for the development and completion of one or more public construction projects relating to disaster relief and mitigation or to local infrastructure;

d. There must be demonstrated local support for the proposed project;

e. The proposed public construction project must have a demonstrated substantial local, regional, or statewide economic impact; and

f. The application must coordinate any federal funds with state, local, and private funds and shall avoid any duplication of benefits that would limit or cause the loss of federal funding.

Prior to submitting an application to the review committee, the authority may contact the applicant to clarify information contained in the application. An application may be amended one time prior to being sent to the review committee. Applications may be otherwise amended with the approval of a majority of the review committee.

32.4(6) Application procedure.

a. Applications shall be reviewed and scored in rounds. The deadline for submission for the first round of applications shall be August 3, 2009. Subsequent rounds shall be at the discretion of the board as funding is available. Applications for each such round shall be due not later than January 1, April 1, July 1, and October 1 of each year, respectively.

b. Subject to availability of funds, applications will be reviewed by IFA staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be requested, in writing, to submit additional information. For applications that meet the threshold requirements, authority staff shall submit to the members of the review committee a copy of the application along with a review, analysis, and evaluation of complete applications.

c. The review committee members will score the applications according to the criteria set forth in subrule 32.4(7), and IFA staff shall compile the scores. To be eligible for a grant, a proposed project must receive a minimum score of at least 100 points. The review committee shall meet to review the ratings for each round of applications. Those applications meeting the minimum criteria shall be referred to the Iowa jobs board with a recommendation of final approval, denial, or deferral.

d. Once an application has been referred to the Iowa jobs board, the applicant may, upon request of the applicant and at the discretion of the chair of the board, make a presentation to the board. The board may impose reasonable limitations on the length and format of such presentations.

e. If the board determines that an application should be approved, the board shall send the application to negotiations. Negotiations shall be conducted by IFA staff, who may work in cooperation with members of the Iowa jobs board. The negotiators shall negotiate the terms and conditions of a grant agreement to recommend to the board.

f. Following negotiations, the negotiating team shall report back to the Iowa jobs board as to whether it was able to agree with the applicant on the terms of a proposed grant agreement and, if so, the proposed terms and conditions resulting from the negotiations. The Iowa jobs board shall then vote, without further substantive revision, on whether to agree to the negotiated terms.

g. If the negotiated terms are agreed to by the Iowa jobs board, a grant agreement memorializing the negotiated terms shall be executed by the chair or vice chair of the Iowa jobs board.

h. Application resources for the Iowa jobs program are available at the Iowa jobs Web site: www.ijobsiowa.gov.

i. IFA may provide technical assistance as necessary to applicants. IFA staff may conduct on-site evaluations of proposed projects.

j. A denied or deferred application may be revised and resubmitted as a new application in a subsequent round, if any. Unless a deferred application is withdrawn by the applicant or revised and resubmitted as a new application, the authority shall keep it on file, and its score shall automatically be ranked among new applications submitted for the next round, if any, once such new applications have been scored.

32.4(7) Application review criteria. The Iowa jobs program review committee shall evaluate and rank applications based on the following criteria:

a. *The total number and quality of jobs to be created and the benefits likely to accrue to areas distressed by high unemployment (0-40 points).* The number of jobs created and other measures of economic impact to areas distressed by high unemployment, including long-term tax generation, shall be evaluated. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Number of jobs. The number of jobs reasonably projected to be created or retained and the number of hours anticipated for each such job shall be compared and ranked.

(2) Quality of jobs. The wages to be paid for each position to be created or retained, the average benefits (including health benefits) to be provided, as well as other subjective qualitative factors, such as work conditions and safety, shall be compared and ranked.

(3) Other benefits likely to accrue to areas distressed by high unemployment, such as the degree to which the project enhances the quality of life in a region and contributes to the community's efforts to retain and attract a skilled workforce.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

b. Financial feasibility, including the ability of projects to fund depreciation costs or replacement reserves, and the availability of other federal, state, local, and private sources of funds (0-40 points). The feasibility of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) A financial analysis of the project, which shall include a description of sources of funding, project budget, and detailed projections of the project's revenues and expenses for the projected useful life of the project;

(2) An analysis of the operational plan, which shall provide detailed information about how the proposed project will be operated and maintained, including a time line for implementing the project;

(3) The availability of other federal, state, local, and private sources of funds for the project.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

c. Sustainability and energy efficiency. The sustainability and energy efficiency of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) Sustainability (0-20 points). The extent to which the project has taken sustainability planning principles into consideration.

1. The project shall be evaluated based on the following specific factors:

- Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land; conservation of open space and farmland and preservation of critical environmental areas; and promotion of the safety, livability, and revitalization of existing urban and rural communities. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bicycle and pedestrian networks, and interconnection with the existing street grid.

- Provision for a variety of transportation choices, including public transit and pedestrian and bicycle traffic.

- Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

- Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.

- The extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals: (1) office of energy independence's Iowa energy independence plan; and (2) general reduction of greenhouse gas emissions.

2. Alternatively, in lieu of being evaluated on each of the criteria set forth above, projects which are designed to receive certification (either platinum level, gold level, silver level, or basic LEED certification) from the United States Green Building Council in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System version 3.0, and which comply with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329, shall receive 20 points.

(2) Energy efficiency (0-20 points). The extent to which the project has taken energy efficiency planning principles into consideration.

1. In the case of new construction, whether the project is designed to meet the current state building energy code. The application for the project must include a letter from the engineer or architect to IFA certifying whether the proposed construction meets the current state building energy code. Additionally, the application should address whether the proposed project is designed to meet energy star standards. If the project is of such a nature that the current state building energy code does not apply to it, the letter shall so state.

2. In the case of rehabilitation of existing structures, an energy audit conducted by a certified energy rater should be provided on each building prior to the preparation of the final work rehabilitation order to determine the feasibility of meeting the requirements of the current state building energy code and energy star standards prior to the start of the rehabilitation. If it is determined to be feasible to meet the current state building energy code standards and energy star standards, appropriate specifications will be written into the work order. If it is not feasible to meet the requirements of the current state building energy code and energy star standards (or either of them), the application will provide information indicating what effective and cost-effective energy improvements will be included as a part of the rehabilitation project.

d. Benefits for disaster recovery (0-40 points). The likely benefits for disaster recovery of the proposed project shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether the proposed project replaces or repairs a structure or facility damaged by the disaster and incorporates measures for reducing or eliminating future disaster losses;

(2) Whether the proposed project would help achieve the community's or region's overall post-disaster recovery vision;

(3) Whether the proposed project benefits the economic recovery of individuals, businesses, or nonprofit organizations.

e. The project's readiness to proceed (0-40 points). The readiness of the project to proceed shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether all engineering and architectural work required for construction to begin has been completed;

(2) Whether all financing for the project (other than competitive grant funds awarded under this chapter) has been committed and is available;

(3) Whether all real property interests (including easements and temporary construction easements) necessary for the construction of the project have been acquired;

(4) Whether all necessary governmental approvals, at the federal, state, and local levels (including, but not limited to, zoning variances, building permits, approval from the Army Corps of Engineers, etc.), have been obtained;

(5) Whether the project has demonstrated a reasonable likelihood of incurring at least 10 percent of the project's total projected development cost within three months of execution of the grant award agreement.

f. General scoring criteria.

(1) In instances where a given criterion is not applicable to a proposed project due to the nature of the project, the review committee members may adjust scoring so that the project is not disadvantaged as a result of the inapplicable criterion. For example, if an earthen levee is proposed as a means of flood control, it should not lose points relative to other proposed projects because it does not comply with the current state building energy code (which does not apply to earthen levees).

(2) Any proposed project that is identified in an Iowa great places agreement, pursuant to Iowa Code section 303.3C, shall have an additional two points added to its cumulative point total.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 8103B, IAB 9/9/09, effective 8/19/09; ARC 8327B, IAB 12/2/09, effective 11/4/09; ARC 8456B, IAB 1/13/10, effective 2/17/10; ARC 8545B, IAB 2/24/10, effective 3/31/10]

265—32.5(16) Noncompetitive grants.

32.5(1) Pursuant to 2010 Iowa Acts, Senate File 2389, section 10(4)“a,” the board shall award \$30,900,000 as follows for disaster relief and mitigation renovation and construction projects, notwithstanding any limitation on the state’s percentage participation in funding as contained in Iowa Code section 29C.6(17):

a. To a county with a population between 189,000 and 196,000 in the last preceding certified federal census for the renovation and expansion of an administrative office building: \$4,400,000.

b. To a city with a population between 120,500 and 120,800 in the last preceding certified federal census, for the following projects:

(1) For renovation of an existing public building to make the building useful for city department offices: \$4,400,000.

(2) For flood mitigation or renovation in and around an existing courthouse: \$2,000,000.

c. To a city with a population between 198,000 and 199,000 in the last preceding certified federal census to be allocated as follows:

(1) For site acquisition, design, engineering, and construction of a fire training and logistics center: \$3,000,000.

(2) For land acquisition, design, and construction of sewers, structures, and pumping facilities necessary to separate and convey sewer flow within the riverpoint service area: \$1,250,000.

(3) For land acquisition, design, and construction of sewers, structures, and pumping facilities necessary to separate or convey sewer flow within the Court Avenue service area: \$3,050,000.

(4) For bank stabilization, stream bed stabilization, and erosion control on highly erodible ground that is impacting utilities, road infrastructure, and water quality: \$700,000.

(5) To improve utilization of two of the wastewater reclamation authority’s existing equalization basins for the control of peak flows during wet weather events in the authority’s sewer system: \$500,000.

d. For a publicly owned acute care teaching hospital located in a county with a population of over 350,000, for the construction and renovation of patient access and care facilities, equipment replacement and upgrades, and other infrastructure improvements: \$1,000,000.

e. For a city with a population between 98,300 and 98,400 in the last preceding certified federal census, for flood protection, replacement, and construction improvements to a recreational sports facility: \$1,050,000.

f. For a city with a population between 68,700 and 68,800 in the last preceding certified federal census, for a public works building that will allow the city to provide for disaster-related services: \$5,000,000.

g. For a city with a population between 62,100 and 62,250 in the last preceding certified federal census, for the demolition, relocation, and reconstruction of a public wastewater treatment plant and the development of a public green space: \$2,000,000.

h. For a city with a population between 2,545 and 2,555 in the last preceding certified federal census, for a streetscape project that reconstructs existing horizontal infrastructure and lighting systems utilizing sustainable development practices: \$1,175,000.

i. For a city with a population between 2,200 and 2,220 in the last preceding certified federal census, for construction of a public city building: \$475,000.

j. For a city with a population between 2,558 and 2,565 in the last preceding certified federal census, for the installation of backflow prevention devices for the city’s storm sewer system: \$600,000.

k. For a city with a population between 6,875 and 6,890 in the last preceding certified federal census, for the construction of grade control structures and associated grading to mitigate future water damage to residential structures: \$300,000.

32.5(2) Noncompetitive grant awards are contingent upon submission of a plan for each project by the applicable county or city governing board to the Iowa jobs board no later than September 1, 2010, on a form to be prescribed by the authority, detailing information requested thereon, such as a description of the project, the plan to rebuild, and the amount or percentage of federal, state, local, or private matching moneys which will be or have been provided for the project, and similar information.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 8905B, IAB 6/30/10, effective 6/10/10]

265—32.6(16) General grant conditions. As a condition of receipt of Iowa jobs funds, recipients shall agree, at a minimum, to all of the following:

32.6(1) Documentation of jobs created or retained. Following the receipt of grant funds pursuant to this chapter and for two years following the completion of the project, each recipient shall report to the authority quarterly the actual number of jobs created as a result of the project along with other information relating to the quality of such jobs, including hours and wages, as requested by the authority.

32.6(2) Recipient obligations. In the event a recipient fails to comply with the requirements of this program or the recipient's grant agreement, the board may cancel the recipient's grant and require the return of any grant funds previously disbursed pursuant to this program. Recipients shall agree to hold harmless and to indemnify the Iowa jobs board, the authority, the state of Iowa, and their officers, employees and agents from any claims, costs or liabilities arising out of the development or operation of the project.

32.6(3) Grant acknowledgment. Each project shall recognize in a prominent location and manner the fact that the project was made possible, in part, through a grant from the Iowa jobs program. During the construction period the recognition (including a display of the Iowa jobs logo) may be located on temporary signage. The completed project shall feature a permanent acknowledgment, such as a plaque or a similar commemoration. Other benefactors of the project may be similarly acknowledged as well.

32.6(4) Use of Iowa jobs Web site. All positions that need to be filled for a project shall be posted on Iowa workforce development's Iowa jobs Web site: www.iowajobs.org/.
[ARC 7941B, IAB 7/15/09, effective 6/15/09]

265—32.7(16) Calculation of jobs created. [See Objection at end of chapter] For purposes of this chapter, new employment positions created and filled (or to be created and filled) as a result of the project and existing positions that would not have been continued were it not for Iowa jobs funding shall be counted when estimating the number of jobs to be created during the application process and when counting the number of actual jobs created in post-grant reporting. Permanent positions filled by the grantee, a contractor, or a subcontractor (or sub-subcontractor, etc.), including construction work, shall be counted. To be counted, a position must be compensated. Indirect jobs and induced jobs shall not be counted.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 9691B, IAB 8/24/11, effective 9/28/11]

265—32.8(16) Grant awards. The Iowa jobs board may fund a component of a proposed project if the entire project does not qualify for funding. The board shall review awards made to ensure geographic diversity. In order to promote geographic diversity, the board may defer grant decisions on applications from areas which have received previous grant awards to allow applications from other parts of the state to be considered. In the event that a competitive grant recipient, prior to execution of an Iowa jobs grant agreement, is awarded a federal grant for its project, in whole or in part, which federal grant, or the possibility thereof, was not disclosed as part of the recipient's application, the board may withdraw all or part of the Iowa jobs program grant.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 8455B, IAB 1/13/10, effective 12/14/09; ARC 8626B, IAB 3/24/10, effective 4/28/10]

265—32.9(16) Administration of awards.

32.9(1) A grant agreement shall be executed between successful applicants (under both the competitive and noncompetitive grant programs) and the Iowa jobs board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

32.9(2) Grant agreement.

a. Following the board's determination that a competitive grant application should be approved, authority staff shall propose a draft grant agreement to the recipient. Within 30 days of either transmission of the proposed grant agreement to the recipient or transmission of notice of how the proposed grant agreement may be accessed by the recipient via the Internet, the recipient shall notify the authority as to whether the recipient will execute the proposed agreement or whether the recipient would prefer to negotiate a different agreement. If the recipient elects to execute the proposed agreement, or if the

recipient fails to make a timely election, the authority shall prepare and transmit to the recipient on behalf of the board a final contract for execution.

b. If the recipient elects to negotiate a different agreement, the recipient shall, at the time it makes such election, notify the authority of the requested changes to the proposed grant agreement. The authority shall consider the requested changes and may make such revisions to the proposed agreement as the authority determines to be prudent and in the best interests of the Iowa jobs program and the state of Iowa under the circumstances.

c. Once the authority and the recipient have reached an agreement, the authority shall prepare and transmit to the recipient on behalf of the board a final contract, subject to approval by the board.

d. If the authority and the recipient are unable to reach an agreement, the authority shall, with the board's approval, draft and transmit to the recipient on behalf of the board a final contract consisting of the Iowa jobs board's best and final offer.

32.9(3) The recipient must execute and return the contract to the Iowa jobs board within 45 days of transmittal of the final contract from the Iowa jobs board. Failure to do so may be cause for the Iowa jobs board to terminate the award.

32.9(4) Certain projects may require that permits or clearances be obtained from other state, local, or federal agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

32.9(5) Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

32.9(6) Any substantive change to a contract shall be considered an amendment. Substantive changes include time extensions, budget revisions, and significant alterations that change the scope, location, objectives or scale of an approved project. Amendments must be requested in writing by the recipient and are not considered effective until approved by the Iowa jobs board and confirmed in writing by IFA staff following the procedure specified in the contract between the recipient and the Iowa jobs board.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 8455B, IAB 1/13/10, effective 12/14/09; ARC 8626B, IAB 3/24/10, effective 4/28/10]

These rules are intended to implement Iowa Code section 16.5(1) "r" and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

[Filed Emergency ARC 7941B, IAB 7/15/09, effective 6/15/09]

[Filed Emergency ARC 8103B, IAB 9/9/09, effective 8/19/09]

[Filed Emergency ARC 8327B, IAB 12/2/09, effective 11/4/09]

[Filed Emergency ARC 8455B, IAB 1/13/10, effective 12/14/09]

[Filed ARC 8456B (Notice ARC 8108B, IAB 9/9/09), IAB 1/13/10, effective 2/17/10]

[Filed ARC 8545B (Notice ARC 8328B, IAB 12/2/09), IAB 2/24/10, effective 3/31/10]

[Filed ARC 8626B (Notice ARC 8454B, IAB 1/13/10), IAB 3/24/10, effective 4/28/10]

[Filed Emergency ARC 8905B, IAB 6/30/10, effective 6/10/10]

[Filed ARC 9691B (Notice ARC 9457B, IAB 4/6/11), IAB 8/24/11, effective 9/28/11]

[Editorial change: IAC Supplement 10/19/11]

OBJECTION

At its September 2011 meeting, the Administrative Rules Review Committee voted to object to rule 265 IAC 32.7, relating to jobs created by an "I" jobs project. This filing was initially reviewed by the committee in May, 2011. In calculating the number of jobs created by an I-jobs project, this filing excludes temporary positions. The Committee takes this action pursuant to the authority of Iowa Code § 17A.4(6).

The Committee objects to rule 32.7 on the grounds that it is unreasonable. Committee members believe that in determining the effectiveness of the I Jobs program, all jobs created, both permanent and temporary should be calculated. Especially in construction-type projects, most of the jobs created are for a limited period. Those jobs do provide needed employment and are an economic benefit to the community. These benefits outweigh the small recordkeeping burden it places on project employers.

Objection filed October 11, 2011

CHAPTER 500
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—
ORGANIZATION AND ADMINISTRATION

661—500.1(103) Establishment of program. The electrician and electrical contractor licensing program is established in the fire marshal division of the department of public safety. The program is under the direction of the electrical examining board and the daily supervision of the state fire marshal or the state fire marshal's designee.

500.1(1) Electrical examining board. The electrical examining board, appointed by the governor, directs the electrician and electrical contractor licensing program, adopts administrative rules governing the program, establishes licensing requirements, and administers discipline related to licensure and to those engaged in activities requiring licensure but who are not licensed.

500.1(2) Executive secretary. The electrical examining board shall appoint an executive secretary who shall be responsible for carrying out the policies of the board and for hiring and supervising additional administrative staff.

500.1(3) Board office. The board office is located within the fire marshal division of the department of public safety.

a. The address of the board office is as follows:

Electrical Examining Board
Iowa Department of Public Safety
State Public Safety Headquarters Building
215 East 7th Street
Des Moines, Iowa 50319

b. The board may be contacted by telephone at (515)725-6147 or by E-mail at elecinfo@dps.state.ia.us.

[Editorial change: IAC Supplement 6/17/09; **ARC 8396B**, IAB 12/16/09, effective 2/1/10; Editorial change: IAC Supplement 9/7/11]

661—500.2(103) Definitions. The following definitions apply to all rules adopted by the electrical examining board.

“Approved by the board” means the approval of any item, test or procedure by the electrical examining board by adoption of a resolution at a meeting of the board, provided that the approval has not been withdrawn by a later resolution of the board. A list of any such items, tests, or procedures that have been approved by the board is available from the board office or from the board Web site.

“Board” means the electrical examining board created under 2007 Iowa Acts, chapter 197, section 12.

“Department” means the department of public safety.

“Division” means the fire marshal division of the department of public safety.

“Documented experience” means experience which an applicant for licensing has completed and which has been documented by the applicant's completion and submission of a sworn affidavit or other evidence required by the board.

“Emergency installation” means an electrical installation necessary to restore power to a building or facility when existing equipment has been damaged due to a natural or man-made disaster or other weather-related cause. Emergency installations may be performed by persons properly licensed to perform the work, and may be performed prior to submission of a request for permit or request for inspection. A request for permit and request for inspection, if required by rule 661—552.1(103), shall be made as soon as practicable and, in any event, no more than 72 hours after the installation is completed.

“Executive secretary” means the executive secretary appointed by the board.

“Farm” means land, buildings and structures used for agricultural purposes including but not limited to the storage, handling, and drying of grain and the care, feeding, and housing of livestock.

“Final agency action” means the issuance, denial, suspension, or revocation of a license. If an action is subject to appeal, “final agency action” has occurred when the administrative appeal process provided for in 661—Chapter 503 has been exhausted or when the deadline for filing an appeal has expired.

“Registered apprenticeship program” means an electrical apprenticeship program registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or an electrical apprenticeship program registered with a state agency whose registration program is accepted by the Bureau of Apprenticeship and Training in lieu of direct registration with the Bureau of Apprenticeship and Training.

“Residential electrical work” means electrical work in a residence in which there are no more than four living units within the same building and includes work to connect and work within accessory structures, which are structures no greater than 3,000 square feet in floor area, not more than two stories in height, the use of which is incidental to the use of the dwelling unit or units, and located on the same lot as the dwelling unit or units.

“Routine maintenance” means the repair or replacement of existing electrical apparatus or equipment of the same size and type for which no changes in wiring are made. The performance of routine maintenance in itself does not require a person to obtain or hold a license as an electrician or electrical contractor.

“Special residential electrician” means a person who holds a current special electrician license with a residential endorsement.

[ARC 8396B, IAB 12/16/09, effective 2/1/10; ARC 9234B, IAB 11/17/10, effective 1/1/11; ARC 9626B, IAB 7/27/11, effective 9/1/11; ARC 9811B, IAB 10/19/11, effective 12/1/11]

These rules are intended to implement 2007 Iowa Acts, chapter 197.

[Filed emergency 12/17/07—published 1/16/08, effective 1/1/08]

[Editorial change: IAC Supplement 6/17/09]

[Filed ARC 8396B (Notice ARC 8160B, IAB 9/23/09), IAB 12/16/09, effective 2/1/10]

[Filed ARC 9234B (Notice ARC 9099B, IAB 9/22/10), IAB 11/17/10, effective 1/1/11]

[Filed ARC 9626B (Notice ARC 9515B, IAB 5/18/11), IAB 7/27/11, effective 9/1/11]

[Editorial change: IAC Supplement 9/7/11]

[Filed ARC 9811B (Notice ARC 9652B, IAB 8/10/11), IAB 10/19/11, effective 12/1/11]

CHAPTER 502
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—LICENSING
REQUIREMENTS, PROCEDURES, AND FEES

661—502.1(103) License categories and licenses required.

502.1(1) The following license categories are established:

- a.* Electrical contractor.
- b.* Residential electrical contractor.
- c.* Master electrician, class A.
- d.* Master electrician, class B.
- e.* Residential master electrician.
- f.* Journeyman electrician, class A.
- g.* Journeyman electrician, class B.
- h.* Residential electrician.
- i.* Apprentice electrician.
- j.* Special electrician.
- k.* Unclassified person.
- l.* Inactive master electrician.

502.1(2) A person who holds any class of license issued by the board, other than a class B license, a residential electrical contractor license, a residential master electrician license, or a residential electrician license, may perform the work authorized by that license anywhere within the state of Iowa. A person who holds a special electrician license may perform the work which is authorized by that license endorsement. A person who holds a class B license may perform the work authorized by that license except in a political subdivision which, by local ordinance, has, pursuant to Iowa Code section 103.29, subsection 4, restricted or barred such work by a person who holds a class B license. A person who holds a residential electrical contractor license, a residential master electrician license, or a residential electrician license may perform the work authorized by that license anywhere within the state of Iowa except within a political subdivision which has, by local ordinance, restricted the use of such a license.

502.1(3) A person who does not have a current valid license shall not perform work as an electrician or as an unclassified person. A person shall not perform work which requires licensing and which is not specifically authorized under the license issued.

EXCEPTION 1: A person who holds a current valid license issued by a political subdivision may perform work as an electrician or unclassified person within the corporate limits of the political subdivision which issued the license.

EXCEPTION 2: A person may work for up to 100 continuous days as an unclassified person prior to obtaining a license. Any documented time during which a person has worked as an unclassified person prior to January 1, 2008, or any time during which a person has worked as a licensed unclassified person shall be credited to any applicable experience requirement. Any time during which a person works as an unclassified person without a license on or after January 1, 2008, shall not be counted toward any such experience requirement, except that a person may receive credit for time worked as an unclassified person on or after January 1, 2008, without a license if the person has applied for a license.

EXCEPTION 3: Electrical installations in buildings, including residences or facilities which are being constructed as part of a course of instruction by an accredited educational institution, may be performed by a person who is not licensed. Such installations are subject to the requirements for permits and inspections pursuant to 661—Chapter 552.

502.1(4) An apprentice electrician or an unclassified person, while performing electrical work, shall be directly supervised at all times by a master electrician or a journeyman electrician or, while performing residential electrical work only, by a residential master electrician, a residential electrician, or a special residential electrician. A master electrician, a journeyman electrician, a residential master electrician, a residential electrician, or a special residential electrician shall at no time directly supervise more than three apprentice electricians and unclassified persons at once. For purposes of this subrule, “unclassified

person” includes a person who is working as an unclassified person and holds either an “unclassified person” license or another license issued by the board.

502.1(5) A journeyman electrician or a residential electrician shall work under the general direction of a master electrician or, while performing residential electrical work only, under the general direction of a residential master electrician. A special residential electrician may perform residential work without supervision or direction.

[**ARC 8396B**, IAB 12/16/09, effective 2/1/10; **ARC 9234B**, IAB 11/17/10, effective 1/1/11; **ARC 9811B**, IAB 10/19/11, effective 12/1/11]

661—502.2(103) License requirements.

502.2(1) An electrical contractor license may be issued to a person who submits to the board the required application with the applicable fee, who holds or employs a person who holds an active master electrician license, who is registered as a contractor with the labor services division of Iowa workforce development, and who is not disqualified pursuant to rule 661—502.4(103). An electrical contractor license issued to a person who holds a class B master electrician license is subject to the same restriction of use as is the class B master electrician license.

502.2(2) A residential electrical contractor license may be issued to a person who is licensed as a class A master electrician, a class B master electrician, or a residential master electrician and who is registered with the state of Iowa as a contractor pursuant to Iowa Code chapter 91C.

502.2(3) A class A master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. Has completed one year of experience as a licensed journeyman electrician, and has passed a supervised written examination for master electrician approved by the board with a score of 75 or higher; or

b. As of December 31, 2007, held a current valid license as a master electrician issued by a political subdivision in Iowa, the issuance of which required passing a supervised written examination approved by the board, and one year of experience as a journeyman electrician; or

c. Holds a current class B master electrician license and has passed a supervised written examination for master electrician approved by the board with a score of 75 or higher.

502.2(4) A class B master electrician license may be issued to a person who submits to the board a completed application with the applicable fee; who is not disqualified from holding a license pursuant to rule 661—502.4(103); who presents credible evidence of having worked for a total of 16,000 hours of cumulative experience as a master electrician, of which at least 8,000 hours shall have been worked since January 1, 1998; and whose experience as a master electrician began on or before January 1, 1998.

502.2(5) A residential master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. Holds a current residential electrician or journeyman electrician license, has 2,000 hours of verified experience as a residential electrician or a journeyman electrician, and has passed a residential master electrician examination approved by the board; or

b. Holds a current special electrician license with a residential endorsement, has 4,000 hours of verified experience, and has passed a residential master electrician examination approved by the board.

502.2(6) A class A journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. Has successfully completed a registered apprenticeship program, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher, and has completed four years of experience as an apprentice electrician.

b. Holds a current class B journeyman electrician license and has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher.

c. Holds a current electrician license in another state, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher, and has satisfied the sponsorship requirements for testing for a journeyman class A license by providing evidence of all of the following:

(1) Current licensure as a journeyman or master electrician from another state which required passing a test sponsored by that state.

(2) Completion of 18 hours of continuing education units approved by the board.

(3) Completion of 1,000 hours of work in Iowa as an unclassified person.

d. Holds a current license issued by the board, excluding a special electrician license other than special residential electrician license; has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher; has completed 54 hours of continuing education approved by the board; and has completed 16,000 hours of electrical work while licensed by the board, except as a special electrician other than a special residential electrician, as verified by a master electrician licensed by the board. The 16,000 hours must include at least the following minimum number of hours of work on commercial or industrial installations in the categories indicated: 500 hours of preliminary work, 2,000 hours of rough-in work, 2,000 hours of finish work, 2,000 hours of lighting and service work, 500 hours of troubleshooting, and 500 hours of motor control work. At least 4,000 hours of the 16,000 hours must have been completed by the applicant within the five years immediately preceding the submission date of the application.

EXCEPTION: On or before December 31, 2019, a maximum of 10,000 of the required 16,000 hours of verified work experience may have been completed between January 1, 2000, and December 31, 2007, without licensure from the board or from any political subdivision.

e. Holds a current license issued by the board as a residential electrician or residential master electrician, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher, and has completed 4,000 hours of work on commercial or industrial electrical installations while licensed by the board, as verified by a master electrician licensed by the board. The 4,000 hours must include at least the following minimum numbers of hours in the categories indicated: 100 hours of preliminary work, 500 hours of rough-in work, 500 hours of finish work, 500 hours of lighting and service work, 100 hours of troubleshooting, and 100 hours of motor control work.

f. Holds a current license issued by the board, has satisfactorily completed an approved postsecondary electrical education program, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher, and, subsequent to beginning the postsecondary electrical education program, has completed at least 6,000 hours of electrical work while licensed by the board, as verified by a master electrician licensed by the board.

502.2(7) A class B journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee; who is not disqualified from holding a license pursuant to rule 661—502.4(103); who presents credible evidence of having worked for a total of 16,000 hours of cumulative experience as a journeyman electrician or master electrician, of which at least 8,000 hours shall have been worked since January 1, 1998; and whose experience as a journeyman electrician or master electrician began on or before January 1, 1998.

502.2(8) A residential electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. Holds a current residential special electrician license and has held that license for a minimum of one year and has passed a residential electrician examination approved by the board; or

b. Has completed 6,000 hours of experience as an apprentice electrician and has passed a residential electrician examination approved by the board. An applicant may take the examination required by this paragraph after completing 5,000 hours of experience as an apprentice electrician, although the license will not be issued until the applicant has completed 6,000 hours of such experience; or

c. Has completed 4,000 hours of experience working under the direct supervision of a residential master electrician, a residential electrician, a master electrician, or a journeyman electrician; has

successfully completed a minimum of one academic year of an electrical trade school approved by the board; and has passed a residential electrician examination approved by the board; or

d. Has completed 8,000 hours of verified experience as a licensed unclassified person including at least 2,000 hours of verified work experience in residential wiring and has passed a residential electrician examination approved by the board; or

e. Has successfully completed a registered residential electrician apprenticeship program and passed a supervised written residential electrician examination approved by the board with a score of 75 or higher.

502.2(9) A special electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets the qualifications for any endorsement entered on the license. Each special electrician license shall carry one or more endorsements as specified in paragraphs “*a*” through “*d*.”

a. Endorsement 1, “Irrigation System Wiring,” shall be included on a special electrician license if the licensee requests it and has passed a supervised examination approved by the board or has completed two years, or 4,000 hours, of documented experience in the wiring of irrigation systems.

b. Endorsement 2, “Disconnecting and Reconnecting Existing Air Conditioning and Refrigeration Systems,” shall be included on a special electrician license if the licensee requests it and has passed a supervised examination approved by the board or has completed two years of documented experience in the disconnecting and reconnecting of existing air conditioning and refrigeration systems.

NOTE: An individual who holds any of the following licenses issued by the plumbing and mechanical systems board established pursuant to Iowa Code section 105.3 is not required to hold a license issued by the electrical examining board in order to perform disconnection and reconnection of existing air conditioning and refrigeration systems:

1. Master HVAC.
2. Journeyman HVAC.
3. Master refrigeration.
4. Journeyman refrigeration.

c. Endorsement 3, “Sign Installation,” shall be included on a special electrician license if the licensee requests that it be included. This endorsement does not authorize a licensee to connect power to a sign that has a voltage greater than 220V and an ampere rating greater than 20 amps. Initial installation or upgrading of the branch circuits supplying power to the sign shall be completed by a licensed master electrician or by a licensed journeyman electrician under the supervision of a master electrician.

d. Endorsement 4, “Residential Electrician,” shall be included on a special electrician license if the licensee requests it and has passed a supervised written examination approved by the board or has completed four years of documented experience performing residential electrical work. A political subdivision may, by enactment of an ordinance filed with the board prior to its effective date, require that a special electrician performing work authorized by this endorsement be supervised by a master electrician. Special electrician licenses with “residential electrician” endorsements shall not be issued after December 31, 2010. Renewals of special electrician licenses with “residential electrician” endorsements shall not be issued after December 31, 2013.

502.2(10) An apprentice electrician license may be issued to a person who submits a completed application to the board with the applicable fee, who is not disqualified pursuant to rule 661—502.4(103), and who is participating in a registered apprenticeship program. A person may hold an apprentice electrician license for no more than six years from the original date on which an apprentice electrician license is granted, except that a person may apply to the board for an exception to this limitation based upon a documented hardship. “Documented hardship” includes, but is not limited to, an interruption in service as an apprentice electrician for active military duty or for an extended illness.

502.2(11) A license as an unclassified person may be issued to a person who submits a completed application to the board with the applicable fee, who is not disqualified pursuant to rule 661—502.4(103), and who is employed by a licensed electrical contractor. Any person who holds a current license issued

by the board, including a special residential electrician license, but excluding other special electrician licenses, may work as an unclassified person without holding an unclassified person license.

502.2(12) In lieu of renewal of the active master electrician license, an inactive master electrician license may be issued to a holder of a master electrician license whose license is due for renewal and who requests placement in inactive status. A holder of an inactive license shall maintain all requirements which would apply for an active master electrician license, except for payment of the fee required for an active license, during the term of the inactive license. If the license holder fails to meet any such requirement during the term of the inactive license, the license holder shall not be entitled to reinstatement of an active license. If the license holder continues to meet all such requirements while holding an inactive license, the license holder may obtain an active master electrician license by surrendering the inactive master electrician license, filing an application for reinstatement, and paying the applicable license fee. The holder of an inactive license who seeks reinstatement of an active license shall not receive any refund of the fee paid for the inactive license. A person who holds an inactive license may not perform work which requires the person to be a holder of that license but may perform work authorized by any active license issued by the board which the person holds.

502.2(13) Retaking an examination. If passage of an examination is a requirement for issuance of a license:

a. An applicant who has taken the examination for a license twice and has failed the examination twice shall wait six months before taking the examination again and shall complete 12 hours of continuing education approved by the board on subjects related to the standards specified in 661—Chapter 504. After satisfying the requirements of this paragraph, the applicant may take the examination two additional times, or a maximum of four times.

b. An applicant who has satisfied the conditions of paragraph “*a*” and who has taken the examination two additional times, or a total of four times, and has failed the examination four times shall wait an additional six months and shall complete an additional 12 hours of continuing education approved by the board on subjects related to the standards specified in 661—Chapter 504 before taking the examination again. After satisfying the requirements of this paragraph, the applicant may take the examination two additional times, or a maximum of six times.

c. An applicant who has satisfied the conditions of paragraph “*b*” and who has taken the examination two additional times, or a total of six times, and has failed the examination six times shall not be permitted to take the examination an additional time unless approved to do so by the board. An applicant who wishes to take an examination after failing it six times shall wait six months and then may petition the board to allow the applicant to take the examination an additional time. The applicant may be required to appear personally before the board when the board is considering the petition.

502.2(14) Reciprocal licensing. A license may be issued, without examination, to a person who holds a license from another state provided that the board has entered into an agreement with the other state providing for reciprocal issuance of licenses and that the agreement recognizes the equivalency of the license issued by the other state and the Iowa license to be issued. The person applying for an Iowa license based on this subrule shall provide a copy of the license from the other state, a completed application for an Iowa license, and the applicable license fee. The board may require additional evidence that the person’s license is current.

[**ARC 8396B**, IAB 12/16/09, effective 2/1/10; **ARC 9234B**, IAB 11/17/10, effective 1/1/11; **ARC 9626B**, IAB 7/27/11, effective 9/1/11; **ARC 9811B**, IAB 10/19/11, effective 12/1/11]

661—502.3(103) License terms and fees. The following table sets out the length of term of each license and the fee for the license.

License Type	Term	Fee
Electrical Contractor	3 years	\$375
Residential Electrical Contractor	3 years	\$375
Master Electrician, Class A	3 years	\$375
Master Electrician, Class B	3 years	\$375
Residential Master Electrician	3 years	\$375
Journeyman Electrician, Class A	3 years	\$75
Journeyman Electrician, Class B	3 years	\$75
Residential Electrician	3 years	\$75
Special Electrician	3 years	\$75
Apprentice Electrician	1 year	\$20
Unclassified Person	1 year	\$20
Inactive Master Electrician	3 years	\$75

502.3(1) Fees are payable in advance with the application, by check or warrant to the Department of Public Safety. The memo area of the check should read “Electrician License Fees.”

502.3(2) Notice of renewal shall be provided to each licensee no less than 30 days prior to the expiration of the current license.

502.3(3) If a license is issued for less than the period of time specified in the table above, the fee shall be prorated according to the number of months for which the license is issued.

502.3(4) A licensee who is on active military deployment for 91 or more consecutive calendar days during the term of a license may have the license period tolled as follows. “Tolled” means that the expiration date of the license shall be delayed for the period of time during which the license term is tolled.

a. A licensee who is on active military deployment for 91 or more consecutive calendar days during a licensing period may have the license terms tolled for one year.

b. A licensee who is on active military deployment for 366 or more consecutive calendar days during a licensing period may have the license terms tolled for two years.

c. A licensee who is on active military deployment for 91 or more consecutive calendar days but fewer than 366 consecutive calendar days may petition the board to have the license tolled for two years upon a showing of a special hardship which would not be alleviated by tolling the license term for only one year.

d. A licensee who requests that the term of a license be tolled pursuant to this subrule shall provide a copy of military orders showing the beginning and ending dates of the deployment or deployments which are the basis for the request.

502.3(5) A licensee may obtain a replacement license for a license that has been lost. To order a replacement license, the licensee shall notify the board office in writing that the license has been lost and shall provide any information required by the board office, which may include, but is not limited to, the license number, the name of the licensee, and a description of the circumstances of the loss, if known. The fee for issuance of a replacement license shall be \$15.

EXCEPTION: If a licensee who is located in an area covered by a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6 which is currently in force or has been in force within the previous 90 days certifies to the board that the license was lost as a direct result of conditions which relate to the issuance of the disaster emergency proclamation, the fee for replacement of the license shall be waived.

[ARC 8396B, IAB 12/16/09, effective 2/1/10; ARC 9234B, IAB 11/17/10, effective 1/1/11]

661—502.4(103) Disqualifications for licensure. An application for a license shall be denied if any of the following apply:

502.4(1) The applicant fails to meet the requirements for the license for which the applicant has applied or the applicant fails to provide adequate documentation of any requirement.

502.4(2) The applicant has previously had a license revoked or suspended by the board, and the circumstances which formed the basis of the revocation or suspension have not been corrected. If a license was revoked or suspended and conditions were imposed for the restoration of the license, licensure shall be denied unless those conditions have been met.

502.4(3) The applicant has been denied, for cause, a license to work, or a license as an electrician has been revoked, for cause, in any other state or political subdivision and the applicant has not subsequently received a license from the state or political subdivision which denied or revoked the license. An applicant who has been denied a license pursuant to this provision may apply to the board for a license and, upon a showing of evidence satisfactory to the board that the condition or conditions which led to the denial or revocation no longer apply, the board may grant the license to the applicant.

502.4(4) The applicant falsifies or fails to provide any information requested in connection with the application or falsifies any other information provided to the board in support of the application.

502.4(5) The applicant may be denied a license if the applicant has previously been convicted of a criminal offense involving, but not limited to, fraud, misrepresentation, arson or theft, or if the applicant is currently delinquent in paying employment taxes to the state of Iowa or the United States. If the denial is based upon conviction of a criminal offense, the board shall examine the specific circumstances of the offense and may grant the license if, in the judgment of the board, sufficient time has passed since the conviction and there is no further evidence of criminal conduct on the part of the applicant.

[ARC 8396B, IAB 12/16/09, effective 2/1/10]

661—502.5(103) License application. Any person seeking a license from the board shall submit a completed application to the board accompanied by the applicable fee payable by check, money order, or warrant to the Iowa Department of Public Safety. The memo area of the check should read “Electrician Licensing Fees.” The application shall be submitted on the form prescribed by the board, which may be obtained from the board office.

[ARC 8396B, IAB 12/16/09, effective 2/1/10]

661—502.6(103) Restriction of use of class B licenses by political subdivisions. A political subdivision may disallow or restrict the use of a class B license to perform electrical work within the geographic limits of that subdivision through adoption of a local ordinance. A copy of any such ordinance shall be filed with the board office prior to the effective date of the ordinance. If a class B license holder held a license issued or recognized by a political subdivision on December 31, 2007, that political subdivision may not restrict the license holder from performing work which would have been permitted under the terms of the license issued or recognized by the political subdivision.

EXCEPTION 1: An ordinance restricting or disallowing electrical work by holders of class B licenses shall not apply to work which is not subject to the issuance of permits by the political subdivision.

EXCEPTION 2: An ordinance restricting or disallowing electrical work by holders of class B licenses which was passed prior to January 1, 2008, shall be filed with the board as soon as practicable and, in any case, no later than April 1, 2008.

[ARC 8396B, IAB 12/16/09, effective 2/1/10]

661—502.7(103) Financial responsibility. Any holder of an electrical contractor license or any holder of an electrician license who is not employed by a licensed electrical contractor and who contracts to provide electrical work which requires a license issued pursuant to 661—Chapters 500 through 503 shall, at all times, maintain insurance coverage as provided in this rule.

502.7(1) The licensee shall maintain general and complete operations liability insurance in the amount of at least \$1 million for all work performed which requires licensing pursuant to 661—Chapters 500 through 503.

a. The carrier of any insurance coverage maintained by the licensee to meet this requirement shall notify the board 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The licensee shall cease operation immediately if the insurance coverage required by this rule is no longer in force and other insurance coverage meeting the requirements of this rule is not in force. A licensee shall not initiate any electrical work which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this rule and of which the licensee has received notice, unless new insurance coverage meeting the requirements of this rule has been obtained and will be in force upon cancellation of the prior coverage.

502.7(2) Reserved.

[ARC 8396B, IAB 12/16/09, effective 2/1/10]

These rules are intended to implement 2007 Iowa Acts, chapter 197.

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[Filed ARC 9811B (Notice ARC 9652B, IAB 8/10/11), IAB 10/19/11, effective 12/1/11]

REGENTS BOARD[681]

[Prior to 4/20/88, Regents, Board of [720]]

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CHAPTER 3
PERSONNEL ADMINISTRATION
[Prior to 4/20/88, Regents, Board of[720]]

ORGANIZATION AND ADMINISTRATION

681—3.1(8A) Creation and purpose. The purpose of these rules is to give effect to the provisions of Iowa Code Supplement chapter 8A to establish an efficient, effective and uniform system of personnel administration for board of regents institutions and staff, to provide equal employment opportunity for all and career opportunities comparable to those in business and industry.

681—3.2(8A) Covered employees. All employees of the board of regents, except those exempted by Iowa Code section 8A.412(5), will be covered under the rules of this system.
[ARC 9812B, IAB 10/19/11, effective 11/23/11]

681—3.3(8A) Administration. Under authority of the board of regents and the supervision of its executive director, a merit system director will be appointed who will be responsible for the development, operation and evaluation of the system in compliance with the objectives and intent of Iowa Code Supplement chapter 8A and regent merit rules. At each board of regents institution the head thereof will designate an administrator to serve as resident director of the system. The resident director will be responsible through the chief executive at the institution for conducting a program of personnel administration in accordance with these rules. The merit system director shall review the operation of the merit system at each of the institutions and will be responsible for the direction of the merit system and have the authority to ensure the uniform administration of the merit system under provision of these rules.

3.3(1) Records and reports. The resident directors will maintain an individual file on each employee that will include a record of all personnel transactions affecting that individual. The resident directors will also maintain records on operations conducted under these rules and will periodically as requested, and at least annually, report a summary of such operations to the merit system director, and in addition will prepare other reports as may be required by the merit system director to indicate compliance with applicable regents and state requirements and federal standards. The resident director will establish, in cooperation with employing departments, a program that will provide for the regular evaluation, at least annually, of the qualifications and performance of all employees.

3.3(2) Nondiscrimination. All programs and transactions administered under these rules will be conducted on the basis of merit and fitness without discrimination or favor because of political or religious opinions or affiliations or national origin, race, sex, creed, color, disability or age except as prescribed or permitted under state and federal law.

3.3(3) Political activity. No employees covered under this system will engage in any partisan political activity that is prohibited by law; employees will have the right to freely express their views as citizens and to cast their vote; coercion of employees for political purposes and the use of employees' positions for political purposes will be prohibited.

Those employees who are by law subject to the provisions of the federal Hatch Act will be informed of such provisions by the resident director at their institution and will be required to adhere thereto.

3.3(4) Revisions and additions. In accordance with the provisions of Iowa Code Supplement chapter 8A, these rules may be revised at any time. In addition, supplementary rules subject to Iowa Code chapter 17A, not inconsistent with these rules may be made applicable to any department, program or service, whenever such additional merit system provisions are required as a condition of eligibility for federal funds.

3.3(5) Suspension of merit increases. During any period of time when merit increases provided under these rules are temporarily suspended by legislative action, the rules providing for such increases shall be suspended for the duration of that legislative mandate. The merit system director shall provide for the administration of such suspension and shall ensure the maintenance of necessary information at each board of regents institution as would be necessary for reinstatement of such increases following

the temporary suspension. Reinstatement of such increases shall be authorized by the board upon the recommendation of the merit system director and may include a delay in increases to promote equity among employees. Any such delay, however, cannot exceed one year and must be applied uniformly throughout the system to all employees with like seniority in the system, or in classification of position, or other specified categorization.

This rule is intended to implement Iowa Code section 262.9.

[Filed 7/12/71; amended 7/17/72, 8/17/73]

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681—3.4 to 3.13 Reserved.

DEFINITIONS

681—3.14(8A) Definitions.

“*Active service*” is a period of paid employment performing the duties of the position.

“*Advanced starting rate*” is a rate on the pay grade which is greater than the minimum rate of the pay grade for a specific class as provided for in the approved pay plan.

“*Base pay*” means the employee’s rate of pay exclusive of extra pay such as lead worker pay, pay for shift differential, pay for special assignment, on-call pay, call back pay, or any other incentive premium pay.

“*Certification*” means the referral of qualified applicants from an eligibility register to a department for the purpose of making a selection in accordance with these rules.

“*Class*” means one or more positions, which are sufficiently similar in duties and responsibilities, that each position in the group can be given the same job title and require the same minimum qualifications as to education and experience, and that the same schedule of pay can be applied with equity to all positions in the class under the same or substantially the same employment conditions.

“*Classification appeal*” is the act of contesting the classification or reclassification of a position as determined by the merit system director after a review of the duties and responsibilities of the position.

“*Classification review*” is the process initiated by a permanent employee or department head requesting review of the classification of the employee’s position.

“*Classify*” means to make the original assignment of a position to an appropriate class on the basis of the duties and responsibilities assigned and to be performed.

“*Days*” means working days unless designated otherwise.

“*Demotion*” means a change of an employee from a position in a given classification to a position in a classification having a lower pay grade. Demotion may be voluntary, involuntary, or result from a reclassification of a position.

“*Eligibility lists*” are lists of the names of qualified applicants for a particular class.

“*Eligibility register*” consists of the names of the applicants from the appropriate eligibility list who are certified for a specific vacancy.

“*Examination*” is the screening of applicants.

“*Grievance*” is a dispute or complaint concerning the interpretation or application of merit system or institutional rules governing terms of employment and working conditions.

“*Lateral transfer*” means a change from a position in one class to a different position in the same class or another class in the same pay grade.

“*Maximum rate*” is the final value of the pay grade to which a classification is assigned. A “red-circled” rate is above the maximum.

“*Minimum rate*” is the minimum value of the pay grade to which a classification is assigned. It is less than an “advanced starting rate.”

“*Pay grade*” or “*grade*” is the numerical designation on the pay schedule to which individual classes are assigned.

“*Permanent employee*” is an employee who has completed the initial probationary period and thereby acquired permanent status in accordance with the rules of the system.

“*Position*” means a group of specific duties, tasks and responsibilities assigned to be performed by one employee. A position may be 12-month or less, full-time or part-time, temporary or permanent, occupied or vacant.

“*Probationary period*” is a six-month period to determine an employee’s fitness for the position. A probationary period is required for an original appointment, reinstatement, reemployment to a class not previously held, promotion, voluntary demotion out of series or lateral transfer out of class.

“*Promotion*” means a change in status of a permanent classified employee from a position in a classification to another position in a classification having a higher pay grade.

“*Reclassify*” means to make a change in the classification of a position by raising it to a higher, reducing it to a lower, or moving it to another class of the same level on the basis of significant changes in the kind or difficulty of the tasks, duties, and responsibilities in such position, or because of an amendment to the classification plan, and officially assigning to that position the class title for such appropriate class.

“*Reduction in force*” is a layoff resulting from a shortage of funds or work, a material change in duties or organization or abolishment of one or more positions.

“*Reemployment*” is the reappointment of an employee from a reemployment register. An employee may be placed on a reemployment register as a result of (1) layoff or voluntary demotion in lieu of layoff, or (2) medically related disability leave and exhaustion of vacation and medically related disability leave credits, or (3) failure to pass a subsequent probationary period on a promotion, lateral transfer out of class, or demotion out of series.

“*Reinstatement*” is the reappointment of a permanent employee who has resigned in good standing.

“*Resident director*” is the person appointed by the head of each regents institution to administer the merit system rules at that institution.

“*Step*” is the value established through the collective bargaining process or by the merit system director for the purposes of applying the rules on compensation and the setting of advanced starting rates.

“*Suspension*” is an enforced leave of absence with or without pay for purposes of conducting an investigation or as a disciplinary measure.

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681—3.15 to 3.24 Reserved.

CLASSIFICATION

681—3.25(8A) Preparation and maintenance of the classification plan. The merit system director, in consultation with the resident directors and subject to the approval of the board of regents, shall develop and maintain a classification plan so that all positions that are substantially similar and comparable in regard to the kind and difficulty of work and the level of responsibility are included in the same class, so that the same minimum qualifications are required for all positions in the same class (except as provided in 3.69(2)), so that the same pay schedule may be equitably applied (except for geographical differences) to all positions in the class. For each class the plan will include a class title, a definition of the job, examples of the kind of work performed, statements of knowledges, skills and abilities, and the minimum qualifications for the class.

681—3.26(8A) Administration of the classification plan. The merit system director will direct the uniform administration of the classification plan. Resident directors may recommend classifications and reclassifications. Employing departments and employees may appeal classification and reclassification in accordance with 681—3.127(8A) of these rules.

The merit system director, in consultation with the resident directors and subject to the approval of the board of regents, may establish new classes and change or abolish existing classes which affect the merit system pay plan in order to meet the needs of the institutions and to properly reflect changes in work and the organization thereof. When the changes do not affect the pay plan of the merit system, the merit system director may, in consultation with the resident directors, change existing classes and report such changes annually to the board of regents. When the classification of a position is changed, the incumbent will be entitled to continue service in the position provided the incumbent meets the minimum qualifications or provided the duties have not changed appreciably. If the incumbent is not eligible to continue, the incumbent may be transferred, promoted, demoted or laid off in accordance with the rules. Changes in classification will not be used to avoid other provisions of these rules relating to layoffs, promotions, demotions and dismissal.

A review of individual classifications, class series, or group of classes may be initiated by the merit system director on a systemwide basis. The administrative review shall preempt the classification appeal procedure provided in 681—3.127(8A) of these rules. Changes in the classification of positions resulting from a systemwide review shall be effective at the beginning of the next fiscal year unless the merit system director establishes an earlier date for implementation.

This rule is intended to implement Iowa Code Supplement sections 8A.412(5) and 8A.413.

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681—3.27 to 3.36 Reserved.

COMPENSATION PLAN

681—3.37(8A) Preparation, content and adoption of the pay plan. The board of regents will adopt a pay plan for all the classes established in the classification plan. The pay plan will consist of a schedule or schedules of numbered grades with minimums and maximums for each grade. Each class will be assigned to a pay grade. The plan will be developed to reflect the relative difficulty and responsibility of the work involved in the various classes, what is paid for similar work by other employers in the pertinent labor market, and the availability of funds with due regard to the results of a collective bargaining agreement negotiated under the provisions of Iowa Code chapter 20. The plan will be uniformly applicable to all regents institutions except for variances approved on the basis of geographical differences.

681—3.38(8A) Review and revision of the pay plan. At least once each year, the complete pay plan will be reviewed for revision by the board of regents in the same manner and following the same procedure stated in 681—3.37(8A). At any time, new classes may be established and other revisions may be made in the plan to reflect proper relationships and to facilitate recruitment and retention. Such changes will be effective after approval by the board of regents and other authority as required by law.

681—3.39(8A) Administration of the pay plan. Within the provisions of these rules, the pay plan will be uniformly administered by the resident directors under the direction of the merit system director for all classes in the system. Except as otherwise provided in these rules and in the pay plan, all employees will be paid between the minimum and maximum of the pay grade to which the employee's class is assigned and such pay will constitute the total cash remuneration the employee receives for the employee's work in that position. Perquisites such as subsistence and maintenance allowances will be considered a part of pay and the value of such will be deducted from an employee's rate of pay. Any employee who is approved for participation in a phased retirement program as provided for by state law and regent policy shall have the salary provided under these rules adjusted as specified by such law and regent policy.

3.39(1) Entrance salaries. The entrance salary for an employee in any position under this system will be the minimum salary of the pay grade to which that class is assigned or in accordance with the approved pay plan, except as provided for the following:

a. Appointment based on a scarcity of qualified applicants. At the request of an institution and on the basis of economic or employment conditions which make it difficult or impossible to recruit at the minimum rate of the pay grade to which a class of position is assigned, a resident director, subject to approval by the merit system director, may authorize for a designated period of time recruitment for that class at a rate higher than the minimum. Where such a higher entrance rate is authorized all employees in the same class and in the same geographical area, who are earning less than the higher entrance rate, will be increased to that higher rate.

b. Appointment based on exceptional qualifications. Employees whose qualifications substantially exceed the minimum required for the class or who possess outstanding experience relative to the demands of the position may, at the request of an employing department, be appointed at a rate higher than the minimum, provided that the pay of all other employees with similar qualifications working under the same conditions at the same institution are raised to that higher rate. Such appointments must be approved by the resident director and reported to the merit system director. Such appointments which necessitate the adjustment of the salaries of employees other than the appointee will, in addition, be reported to the merit system director.

Increases authorized and granted to other employees as the result of appointments based on the scarcity of qualified applicants, 3.39(1) "a," or appointments based on exceptional qualifications, 3.39(1) "b," will establish new merit review dates for affected employees.

c. Appointments based on prior service at the institution. Employees who were employed by an appointing institution in a nonmerit system position and who performed duties of the same character and responsibility as the merit class to which they are being appointed may be paid at a rate higher than the minimum reflecting prior service in a comparable position. Such appointments must be approved by the resident director and reported to the merit system director.

3.39(2) Merit increases. Permanent and probationary employees will be eligible for a merit increase following one year of satisfactory performance in their assigned classification with the exception that permanent and probationary employees paid at the minimum of a pay grade will be eligible for a merit increase upon completion of 6 months of satisfactory service in their assigned classifications and every 12 months thereafter. No merit increase will be granted above the maximum of the pay grade. The period of satisfactory performance will be measured from the last merit review date if such a date has been established. Merit increases in pay will not be made retroactively, but may be denied or deferred by the employing department on the basis of work performance. Employees whose merit increases are denied or deferred will, prior to the scheduled effective date of increase, be informed of such action by a written statement from their employing department which specifies the reason for the denial or deferral. Denials or deferrals of a merit increase for six months or less for reason of unsatisfactory work performance will not result in the establishment of a revised merit review date.

Deferrals resulting from leaves of absence without pay or layoff exceeding 30 calendar days will cause a change of the merit review date equal to the time away from work.

3.39(3) Pay on promotion. An employee who is promoted will be moved to the minimum rate of the new grade, or to a higher rate on the new grade which provides an adjustment that is the salary equivalent of one step higher than the employee's present base pay. In no event will the adjustment result in pay above the maximum of the new grade.

If the promotion involves movement to a new grade that is three or more grades higher than the employee's present grade, the resident director may approve, on written request from the employing department, an increase that is equivalent to the value of two steps higher than the employee's present base pay.

For the purpose of calculating the promotional increase, any extra pay such as shift differential pay, pay for special assignment, on-call pay, pay for overtime, or pay for call back shall be excluded as part of the employee's present base pay. The merit review date will be computed from the effective date of promotion and in accordance with 3.39(2). Pay on promotion in accordance with the provisions of subrule 3.39(1), paragraph "b," may be authorized by a resident director and will be reported to the merit system director.

3.39(4) Pay on demotion. Upon recommendation by the department head, and with the prior approval of the resident director, the pay of an employee who is demoted will be set at any rate within the new pay grade that does not exceed the rate at which the employee was paid in the position from which the employee was demoted. Merit review date will not change.

If the salary of an employee who is demoted as the result of the reclassification of the employee's position exceeds the maximum salary of the pay range to which the new classification is assigned, at the discretion of the employing department and with the approval of the resident director, the salary may be "red-circled" for a period not to exceed one year. An extension not to exceed one additional year may be approved by the merit system director.

If an employee accepts voluntary demotion in lieu of layoff, the salary shall be retained providing funding is available. In no event will the salary exceed the maximum of the new pay grade.

3.39(5) Pay on reinstatement, reemployment or return from leave.

a. An employee who is reinstated will be paid at a rate no greater than what the employee was last paid and between the minimum and maximum of the pay grade. An employee who is returned to a merit system position from a professional position, will be paid in accordance with subrule 3.39(4), pay on demotion. The date of reinstatement will be the merit review date.

b. An employee who is reemployed to the previously occupied class will be paid at a rate no greater than what the employee was last paid and between the minimum and maximum of the pay grade. When a merit increase has been granted to an employee in a position taken through voluntary demotion in lieu of layoff and the merit increase results in a higher rate of pay than last paid to the employee prior to the voluntary demotion in lieu of layoff, the employee may be reemployed to the previously occupied class with the higher rate of pay. Reemployment to the previously occupied class from a position taken as a voluntary demotion in lieu of layoff will not be considered a promotion. The merit review date will

not change as a result of the voluntary demotion in lieu of layoff, nor as a result of reemployment to the previously occupied class from a position taken as a voluntary demotion in lieu of layoff.

c. An employee who is reappointed to the previously occupied position or a position in the same class on conclusion of a leave without pay will be paid in accordance with the provisions concerning pay on reemployment as provided above.

3.39(6) Pay for special assignment. Provided an employee is granted special assignment in accordance with 3.102(2) of these rules the employee will be paid for the duration of such assignment consistent with:

- a. 3.39(3) Pay on promotion if assigned to a class having a higher pay grade;
- b. 3.39(7) Pay on transfer if assigned to a class having the same pay grade;
- c. The present base pay if assigned to a class having a lower pay grade.

3.39(7) Pay on lateral transfer.

a. Employees who are transferred from one position to another position in the same class shall receive no adjustment in base pay;

b. Employees who are transferred from one position to another position in a different class but in the same pay grade shall receive no adjustment in base pay except as set forth in "c" and "d" below;

c. Employees who are transferred from one class with a lower or no advanced starting rate to a class with a higher advanced starting rate shall receive:

(1) An adjustment to the higher advanced starting rate if the base pay prior to lateral transfer is less than the higher advanced starting rate. When the base pay adjustment is the salary equivalent of the value of a step or greater, an adjustment in merit review date will result and be computed from the effective date of lateral transfer and in accordance with 3.39(2); or

(2) There will be no adjustment in base pay if the employee's base pay prior to lateral transfer is not less than the higher advanced starting rate.

d. Employees who are transferred from one position in a class with a higher advanced starting rate to a position in a class in the same pay grade but with a lower or no advanced starting rate shall be paid in accordance with subrule 3.39(4), pay on demotion.

e. In no case may an employee be paid below the minimum or above the maximum for a classification.

3.39(8) Pay upon change in pay grade of class. If the class is revised and reassigned to a higher pay grade, subrule 3.39(3), pay on promotion, will apply.

If the class is revised and reassigned to a lower pay grade, subrule 3.39(4), pay on demotion, will apply.

3.39(9) Pay for part-time employment. Pay for part-time employment will be proportionately equivalent to the rate for full-time employment.

3.39(10) Pay for exceptional performance. An employee may be given pay for exceptional performance, not to exceed 5 percent of an employee's current annual salary, at the written request of the employee's department head with appropriate administrative approval and the prior approval of the resident director. The request will describe the nature of the exceptional job performance for which additional pay is requested, indicate the amount proposed, and specify the source of funds. The award may be based on sustained superior performance or an exceptional achievement or contribution during the period since the employee's last performance review. To qualify for an exceptional performance award, an employee must have a cumulative performance evaluation exceeding standards and have no individual rating below satisfactory. Payment will be made as a lump sum award and will not change the employee's established salary rate. No employee will be eligible for more than one award a year.

3.39(11) Pay for call back. Employees who are called back to work after completing their regular work schedule will be paid for a minimum period of three hours, regardless of the time worked. Employees who are called back and work in excess of three hours will be paid the actual time worked.

3.39(12) Pay for lead worker status. On request of an employing department and with approval of the resident director, an employee who is assigned and performs limited supervisory duties (such as distributing work assignments, maintaining a balanced workload within a group, and keeping attendance and work records) in addition to regular duties, may be designated as lead worker in the classification

assigned, and paid during the period of such designation the employee's base salary plus the equivalent of one step.

3.39(13) *Pay for trainees and apprentices.* The schedule of wages for trainees and apprentices will consist of a step in the pay matrix for every year of training required. Each employee whose performance is satisfactory as determined by the employing department will progress one-half step every six months from the first step of the schedule to the entrance rate established for the journey class at the completion of time established for training or apprenticeship.

3.39(14) *Pay for returning veterans.* Veterans who return from military leave will have their pay set at the rate they would have attained had they continued in service at the regent institution from which they took military leave.

3.39(15) Reserved.

3.39(16) *Payment of a shift differential.* All employees will be paid a shift differential for any shift of which four or more hours occur between 6 p.m. and midnight and a shift differential for any shift of which four or more hours occur between midnight and 6 a.m. The amount of the shift differential paid shall be determined by the merit system director.

3.39(17) *Pay for time on-call.* At the request of the employer, employees who are off duty and free to engage in their own pursuits shall be considered on-call, provided (a) that they leave word with the employer where to be reached if needed, and (b) that they are able to report ready for work within a specified time after being contacted by the employer. The rate for on-call pay shall be determined by the merit system director.

3.39(18) *Pay on reclassification of position.* If a position is reclassified, the incumbent's pay will be fixed in accordance with the rules governing pay on demotion, reemployment, transfer, or promotion, whichever is applicable.

This rule is intended to implement Iowa Code Supplement section 8A.413.

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681—3.40 to 3.49 Reserved.

APPLICATION AND EXAMINATION

681—3.50(8A) Applications. Applications for employment will contain no question so formed as to elicit any information prohibited by state or federal statutes, and the truth of statements made on the application will be certified by the signature of the applicant. Public announcement of vacancies will be made for ten calendar days in classifications for which applications are not accepted on a continuous basis. Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies established by the institution. Applications will be kept on file at the institution for a period of time to be designated by the resident director.

681—3.51(8A) Examinations. Examinations will be practical in nature, constructed to reveal the capacity to successfully perform the job for which the applicant is competing, and will be rated objectively.

681—3.52(8A) Character of examinations. Examinations may be written or oral and may include physical or performance tests, or any combination of these. Examinations may screen for such factors as education, experience, aptitude, knowledge, character, physical fitness, or other qualifications or attributes which enter into the determination of the relative fitness of applicants. The examination process must be approved by each institution's resident director.

Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies established by the institution.

Veterans preference shall be applied as provided by law.

681—3.53 and 3.54 Reserved.

681—3.55(8A) Rejection or disqualification of applicants. The resident director may reject any applicant or, after examination, may refuse to certify any candidate if it is found that the person:

1. Does not meet the minimum required qualifications for the class;
2. Cannot perform the essential functions of the position with or without a reasonable accommodation;
3. Habitually uses narcotics or uses intoxicating beverages to excess;
4. Has made a false statement of material fact in the application;
5. Has information concerning the examination to which the person is not entitled;
6. Has been convicted of a crime which makes the person unsuitable for employment in a particular class or position;
7. Has been dismissed from private or public service for a cause that would be detrimental to the regents institution employing the applicant.

A disqualified applicant will promptly be notified in writing of such action at the last-known address. A disqualified applicant may request review of the reason for disqualification. Such request will be in writing and upon receipt, the resident director will give full consideration to the request and notify the applicant of the resident director's decision in writing.

681—3.56 Reserved.

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681—3.57 to 3.66 Reserved.

CERTIFICATION AND SELECTION

681—3.67(8A) Eligibility lists. Three kinds of eligibility lists will be established: reemployment, employment, and promotional.

Reemployment lists will consist of the names of permanent employees who have been laid off or demoted in lieu of layoff or who are able and qualified to return to work following a medically related disability leave, in accordance with 3.104(4)“j” and 681—3.143(8A) or in accordance with 3.90(4). These lists will be maintained in order by retention points calculated in accordance with the rules for reduction in force, beginning with the person with the highest number of points. Reemployment rights apply only to classes for which the employee is eligible in accordance with these rules.

Employment lists will include the names of all applicants who meet the qualifications for a classification. Employment lists will be maintained for specific classifications designated for continuous acceptance of applications in accordance with rule 681—3.50(8A). Promotional lists will consist of the names of all permanent employees who are qualified and have requested consideration for promotion unless an employing department requests that the promotional list be limited to permanent employees of that department.

3.67(1) Removal of names from eligibility lists. In addition to the causes for rejection or disqualification set forth under 681—3.55(8A), the resident director may permanently or temporarily remove names from eligibility lists for the following reasons:

- a. Upon receipt of notification from applicants that they no longer desire consideration for a position in the class.
- b. Appointment through certification from such eligibility list to fill a permanent position.
- c. Failure to respond within five working days to the written inquiry of the resident director relative to availability for appointment.
- d. Declination of appointment without good cause or under conditions which the applicants previously indicated they would accept.
- e. Failure to appear for a scheduled employment interview or to report for duty within a reasonable time specified by the employing department.
- f. Failure to maintain a record of their current address with the resident director as evidenced by the return of a properly addressed unclaimed letter or other evidence.
- g. Willful violation of any of the provisions of these rules.
- h. Rescinded IAB 6/12/02, effective 7/17/02.

3.67(2) Duration of eligibility lists. Eligibility lists may be continuous or closed after a vacancy is filled. Names may be added to or deleted from eligibility lists in accordance with these rules. The names of applicants who have not been appointed or otherwise removed from lists will be removed at the termination of the period of time designated by the resident director.

3.67(3) Precedence of eligibility lists. Reemployment lists will supersede employment and promotional lists.

681—3.68(8A) Personnel requisitions. Requests to fill vacancies in permanent positions will be initiated by the requesting department and forwarded to the resident director. The request will include the class of the position to be filled, the number of vacancies and the date of need.

681—3.69(8A) Certification from eligibility lists. The resident director will certify the names of eligible candidates in the following manner:

From a reemployment list the resident director will certify for appointment in the following order:

1. If the vacancy occurs in a college or operating division in which employees on the reemployment list for that class were last employed, the resident director will certify the one employee with the greatest number of retention points on the list who was laid off, demoted or took a medically related disability leave from that college or division; or

2. If the vacancy occurs in a college or operating division other than the one in which any employee on the reemployment list for that class was last employed, the resident director will certify the reemployment list.

When the reemployment list for a class has been exhausted, employing departments may request either the employment list or promotional list or both, and the resident director will certify the registers.

3.69(1) Eligibility registers. An eligibility register will consist of the names of the certified applicants for a specific vacancy.

3.69(2) Special qualifications. An employing department may request in writing that the resident director certify applicants who have special qualifications in addition to the minimum qualifications prescribed in the class specifications. If, in the judgment of the resident director, such a request is validly related to job performance, the resident director may certify only the names of applicants who have such special qualifications.

This rule is intended to implement Iowa Code Supplement section 8A.413.

681—3.70(8A) Selection of employees. Final selection will be made by the employing department. Nothing in these rules will require the hiring of any applicant. When a properly certified applicant is selected by a department, the department will so notify the resident director.

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681—3.71 to 3.80 Reserved.

APPOINTMENTS AND PROBATION

681—3.81(8A) Appointments. All appointments under this system will be made in accordance with all the provisions of these rules including those concerning certification and selection unless otherwise specified and no appointment shall be made without the prior approval of the resident director.

681—3.82(8A) Temporary appointments. Temporary appointments may be made and approved by the resident director to provide for services needed on a periodic basis. Appointments may be made without reference to the provision of these rules regarding minimum qualifications, certification, and selection. Employees appointed on this basis will not work more than 780 hours in any fiscal year.

This rule is intended to implement Iowa Code Supplement section 8A.413(9).

681—3.83 Reserved.

681—3.84(8A) Trainee, apprentice, or career development appointment. When a position within a class cannot be filled because of the lack of qualified eligibles, or applicants meeting the minimum qualifications for the class, or the institution specifically designates a position for trainee, apprentice, or career development purposes, the institution may appoint a person who meets the minimum qualifications established in programs approved by the merit system director for this type of appointment.

681—3.85(8A) Project appointment. When it is known that a particular job, project, grant or contract will require the services of an employee for a limited duration, a project appointment may be made. Such an appointment will not be made for more than one year. While an extension beyond one year may be approved by the merit system director on the basis of a limited need that could not otherwise be efficiently and effectively filled, successive project appointments will not be allowed.

Such appointments will not confer to the individual any right of position, transfer, demotion, or promotion, but incumbents shall be eligible for vacation and sick leave, except that a project appointment made for less than 780 hours will be considered a temporary appointment under rule 681—3.82(8A) without conferring rights or eligibility for vacation or sick leave.

This rule is intended to implement Iowa Code Supplement section 8A.413(9).

681—3.86 Reserved.

681—3.87(8A) Permanent appointments. An applicant who is certified from an eligibility register and appointed with the approval of the resident director to a permanent position, and who successfully completes a probationary period in accordance with these rules, will have permanent status.

681—3.88 Reserved.

681—3.89(8A) Reinstatement. A permanent employee who has resigned in good standing may be reappointed to a position in the same class or pay grade from which the employee resigned or a lower class for which qualified.

681—3.90(8A) Probationary period.

3.90(1) Purpose. The probationary period will be an important part of the examination and selection process, and will be used by the employing department to closely observe and evaluate employee's work, to train and aid the employees in adjustment to their position, and to reject and dismiss any employee whose performance fails to meet standards.

3.90(2) Duration of probation. An employee on original appointment or who is reinstated or reemployed to a class not previously held will be on probation until the person completes six months of active service in the position to which appointed. If a probationary employee is not dismissed during this time, the person will, at the conclusion of the probationary period, have permanent status in that class. A period of temporary employment immediately preceding a permanent appointment to the same class may, at the request of the employing department, be counted as probationary service.

Permanent employees who are promoted from one class to another, or who transfer out of class, or who demote will serve a period of probation of six months in the position to which appointed. If the employee is not dismissed during this time, the employee will, at the conclusion of the probationary period, have permanent status in the class.

3.90(3) *Layoffs during probation.* Employees who are laid off during their probationary period will, upon written request to the resident director, be placed on the appropriate eligibility list.

3.90(4) *Dismissal during probation.* Employees on original appointment or who have been reinstated or reemployed and dismissed during their probationary period may be returned to the eligibility list from which they were appointed if, in the judgment of the resident director, they may be able to perform satisfactorily in another position. Employees who are promoted from one class to another or who transfer out of class or who demote out of class series and are dismissed during their probationary period may be placed on the reemployment list for a previously held classification if, in the judgment of the resident director, they may be able to perform satisfactorily in another position.

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681—3.91 to 3.100 Reserved.

PROMOTIONS, DEMOTIONS, TRANSFERS AND TERMINATIONS

681—3.101(8A) Promotions. Vacancies will be filled by promotion of qualified permanent employees in accordance with these rules whenever practicable and feasible.

This rule is intended to implement Iowa Code Supplement sections 8A.402 and 8A.413.

681—3.102(8A) Transfers.

3.102(1) *Reassignments.* Employees with the approval of the resident director may be reassigned at any time from one position to another in the same class within an institution, except that probationary employees who were certified to fill their position on the basis of special qualifications as provided in 3.69(2) will not be reassigned unless the new position requires the same special qualifications which justified the original certification.

3.102(2) *Special assignment.* When the services of employees are temporarily needed in a position in the same or a different class within the institution other than the position to which the employees are assigned, they may be given special assignment, with the prior approval of the resident director and involved departments, to perform the duties of such position for a period not to exceed six months without change in title or status. In unusual circumstances, an extension of a special assignment for no more than one additional six-month period may be approved by the merit system director on written request from the resident director. Employees will be paid for special assignment in accordance with 3.39(6).

3.102(3) *Intra- and inter-institutional transfers.* With permanent employees' approval they may be transferred from one position to another in the same class or to a position in another class in the same pay grade, from one department to another department in the same or different institution under this system, provided both departments involved approve the transfer, and the resident director certifies that the employees meet the minimum qualifications for the class.

Transfers to higher or lower classes will be governed by the provisions of these rules concerning promotion or demotion, respectively.

681—3.103(8A) Demotion (voluntary). If, for any reason, an employee wishes to be demoted to a position in a lower class, the resident director may, upon written request from the employee and with the approval of involved departments, effect such a demotion provided the employee is certified by the resident director as meeting the qualifications required for the lower class. Voluntary demotion will not be subject to appeal.

681—3.104(8A) Terminations.

3.104(1) Resignations. To resign in good standing employees must notify the employing department of their intention to resign in writing at least ten days prior to the effective date of resignation, except in cases where the employing department agrees to a shorter period of notice. An employee who fails to give proper notice may, at the request of the employing department, be barred from future certification to that department or from reinstatement as provided for in these rules. Employees who resign will have no rights of appeal under these rules.

3.104(2) Termination on expiration of appointment. On expiration of an appointment of limited duration the employing department will report such action in writing to the resident director.

3.104(3) Retirement. Employees who retire will be considered to have terminated in good standing and without prejudice and will have no rights of appeal under these rules.

3.104(4) Reduction in force.

a. Nothing herein shall be construed as a guarantee of hours of work per day or per work period. An institution may lay off an employee when it deems necessary because of shortage of funds or work, a material change in duties or organization or abolishment of one or more positions.

b. Reduction in force will be accomplished in a systematic manner in accordance with these rules; however, the layoff provisions established in this subrule shall not apply to:

(1) Temporary layoffs of less than 20 workdays or 160 hours of work per calendar year;

(2) Interruptions in the employment of school term employees during breaks in the academic year, during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the resident director;

(3) The promotion or reclassification of an employee to a class in the same or a higher pay grade;

(4) The reclassification of an employee's position to a class in a lower pay grade that results from the correction of a classification error, the implementation of a class or series revision, changes in the duties of the position, or a reorganization that does not result in fewer total positions in the unit that is reorganized;

(5) A change in the classification of an employee's position or the appointment of an employee to a vacant position in a class in a lower pay grade resulting from a disciplinary or voluntary demotion; and

(6) The transfer or reassignment of an employee to another position in the same class or to a class in the same pay grade.

c. The individual whose position is eliminated or reduced in hours will be reassigned to a vacant position in the same classification provided the individual can perform the essential functions of the position and possesses any required special qualifications. If there is no vacant position to which the individual can be reassigned, the individual(s) may request and accept layoff with reemployment rights as provided in 3.104(4) "o." If an individual(s) directly affected does not request layoff with reemployment rights, the reduction in force procedures in this subrule shall be implemented.

d. Reduction in force will be made by class.

e. Reduction in force may be made by organizational unit within an institution or institutionwide, as designated by the institution, provided such designation is reported to the merit system director before the effective date of the reduction.

f. The order of reduction in force will be by type of appointment as follows: temporary, trainee, initial probationary, permanent.

g. Each permanent employee affected by a reduction in force will be notified in writing of the layoff and the reasons for it at least 20 working days prior to the effective date of the layoff unless budgetary limitations require a lesser period of notice.

h. There will be competition among all employees in the class affected by the layoff based on a retention points system that will consist of points for length of service and performance evaluation of all employees in the class within the organizational unit or units affected. Retention points will be calculated as follows:

(1) Length of service credit will be allowed at the rate of one point for each month of service. Any period of 15 calendar days of service in a month will be considered a full month. For the purpose of computing length of service credits, the institution will include all periods of regular merit employment during periods of continuous regular appointments with the institution between the date of the original appointment and the date of the layoff or as provided otherwise by law. Periods of leave without pay exceeding 30 days will not be counted.

(2) Performance evaluation credit will be allowed at the rate of one point for each month of satisfactory service. No credit will be allowed for service rated less than satisfactory. If there is no record of performance evaluation for a specific time period, it shall be presumed that the employee's performance is satisfactory.

(3) Reduction in force retention points will be the total of length of service and performance evaluation.

i. Employees will be placed on the layoff list beginning with the employee with the greatest number of retention points at top. Layoffs will be made from the list in reverse order unless the employee with the least retention points has special skills and abilities required to perform in the position currently occupied. Employees with greater retention points who must vacate their positions must possess the special skills and abilities required for that position and meet any job-related selective certification required for that position. Copies of the computation of retention points will be made available to affected employees. One copy will be retained by the resident director and one copy will be forwarded to the merit system director at least ten days prior to the effective date of the layoff.

j. When two or more employees have the same total of retention points, the order of termination will be determined by giving preference for retention to the employee with the longest time in the class.

k. The reduction in force plan approved by the merit system director will be made available by the resident director so that all employees will have access to it.

l. An affected employee may appeal a reduction in force by filing, within five days after notification as provided in 3.104(4) "g," a written grievance with the resident director (at Step 3 of the grievance procedure provided in 681—3.129(8A) or at a comparable step of a procedure approved under 3.129(1)). If not satisfied with the decision rendered at that step, the employee may pursue an appeal in accordance with the grievance procedure.

m. A supervisory employee, defined as a public employee who is not a member of a collective bargaining unit and who has authority, in the interest of a public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, to direct such public employees, or to adjust the grievances of such public employees, or to effectively recommend such action, may not replace or bump a junior employee not being laid off. For purposes of this subrule, "junior employee" means an employee with less seniority or fewer retention points than a supervisory employee.

n. A permanent employee in a nonsupervisory class in which layoffs are to be effected may, in lieu of layoff, elect voluntary demotion to a position in the next lower nonsupervisory class in the same series utilized at the institution or, in the absence of a lower nonsupervisory class in the same series, to a nonsupervisory class which the employee has formerly occupied while in the continuous employment of the institution. The employee must possess any special qualifications required and have the ability to perform the essential functions of the position. Such demotion or the occupying of a formerly held nonsupervisory class will not be permitted if the result thereof would be to cause the layoff of a permanent employee with a greater total of retention points. To exercise the right of voluntary demotion or to occupy a formerly held nonsupervisory classification in lieu of layoff, the employee must notify the resident director in writing of such election not later than five calendar days after receiving notice of layoff. Any permanent employee displaced under these provisions will have the right of election as provided herein.

o. Employees who are laid off or who accept voluntary demotion in a series or assignment to a previously held class in lieu of layoff will, at their request, have their names placed on the reemployment eligibility list for the class from which they were laid off, a lower class(es) in the same series from which they were laid off, and a class(es) formerly occupied in accordance with 681—3.67(8A) to 681—3.70(8A) for a period of up to two years from the date of layoff. If reemployment occurs within two years of separation due to reduction in force, prior service credit shall be restored. Acceptance of reemployment in a lower class in the same series from which the employee was laid off or in a previously held class will not affect the employee's standing on the reemployment list for the class from which the employee was laid off. After two years on the reemployment eligibility list, the employee's name shall be removed.

3.104(5) *Abandonment of position.* Employees who are absent from duty for three consecutive work days without proper notification and authorization thereof shall be deemed to have resigned their positions.

This rule is intended to implement Iowa Code Supplement section 8A.413(14).
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681—3.105 to 3.114 Reserved.

DISCIPLINARY ACTIONS

681—3.115(8A) Causes for disciplinary action. All employees may be subject to disciplinary action for any of the reasons specified in Iowa Code Supplement section 8A.413(16).

681—3.116(8A) Disciplinary actions. Disciplinary action will be reasonable, timely and related in severity to the seriousness of the offense; however, this will not preclude reasonable penalties of varying severity for an accumulation of offenses.

3.116(1) *Suspension.* A department head may, for cause in accordance with 681—3.115(8A), suspend any employee for such length of time as the department head considers appropriate but not to exceed 10 days at any one time or 20 days in any 12-month period. The department head will inform the affected employee of the suspension and the reasons therefor in writing within 24 hours of the time the action is taken. A copy of the suspension will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or to a comparable step in a grievance

procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, employees may pursue their appeal in accordance with the grievance procedure.

3.116(2) *Reduction of pay within grade.* A department head may, for cause in accordance with 681—3.115(8A), reduce the pay of an employee to a lower rate of pay within the pay grade assigned to the class. The department head will notify the affected employee of the reduction, the reasons therefor and the duration thereof, in writing within 24 hours of the time the action is taken. A copy of the reduction notice will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or a comparable step in a grievance procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, employees may pursue their appeal in accordance with the grievance procedure.

3.116(3) *Demotion.* A department head may, for cause in accordance with 681—3.115(8A), demote an employee to a vacant position in a lower class provided the employee meets the qualifications for that lower class. The department head will notify the affected employee of the demotion and the reasons therefor in writing within 24 hours of the time the action is taken. A copy of the notice of demotion will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or a comparable step in a grievance procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, the employees may pursue their appeal in accordance with the grievance procedure.

3.116(4) *Discharge.* A department head may, for cause in accordance with 681—3.115(8A), discharge any employee. The department head will notify the affected employee of the discharge and the reasons therefor in writing within 24 hours of the time the action is taken. A copy of the notice of discharge will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or a comparable step in a grievance procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, employees may pursue their appeal in accordance with the grievance procedure.

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681—3.117 to 3.126 Reserved.

GRIEVANCES AND APPEALS

681—3.127(8A) *Reviews of position classification.* Permanent employees and department heads may request a position classification review and such requests shall be in written form. The employee's request will be forwarded to the resident director with a recommendation from the department head within 10 working days of the date of the request. The resident director shall review the employee's and department head's request and with a recommendation forward the request to the merit system director within 20 working days. The merit system director shall review and respond within 20 working days to the resident director who will inform the employee and department head. If the employee or department head is not satisfied with the merit system director's decision, that person may appeal the decision in writing within 15 working days of the merit system director's decision to a qualified classification appeal committee appointed in accordance with the procedures approved by the board of regents.

The classification appeal committee will conduct such investigation as it deems necessary to determine the proper allocation of the position, and will notify the involved parties of its decision within 45 calendar days after the committee receives the appeal. Any further requests for review of the same

position must be presented to the resident director in compliance with this rule and will be considered a new classification review. A new classification review will not be allowed for one year following the final decision on a request for review unless there have been substantial changes in the duties and responsibilities of the position. An appeal will be considered on the basis of duties and responsibilities assigned at the time of the original classification review, and in no case will the assignment of additional duties and responsibilities following the resident director's investigation of the original request for review be considered during the process of appeal as outlined above.

This rule is intended to implement Iowa Code Supplement section 8A.413.

681—3.128(8A) Appeals on application, examination and certification procedures. Applicants may appeal an action which they allege to be in violation of these rules concerning applications, examinations or certifications. The aggrieved applicant will first discuss the matter with the resident director and, if not satisfied with the explanation and decision given, may within 20 days after the occurrence of the alleged violation file a written appeal with the resident director at Step 3 of the grievance procedure provided in 681—3.129(8A), or at a comparable step of a procedure approved under 3.129(1). If the applicant is not satisfied with the decision rendered at that step the applicant may pursue the appeal in accordance with the grievance procedure. If the grievance concerns the form or content of the application or an examination as approved by the merit system director, the director will act jointly with the resident director and at subsequent steps in response to an appeal.

Appeals by applicants alleging improper discrimination on the basis of political or religious opinions or affiliations, or national origin, race, sex, disability or age in selection, will be filed at Step 3 in the grievance procedure provided in 681—3.129(8A) or at a comparable step of a procedure approved under 3.129(1).

This rule is intended to implement Iowa Code Supplement sections 8A.402, 8A.413, and 8A.416.

681—3.129(8A) Grievances. Disputes or complaints by permanent employees regarding the interpretation or application of institutional rules governing terms of employment or working conditions (other than general wage levels) or the provisions of these merit system rules (other than disputes whose resolution is provided for in 681—3.127(8A) and 681—3.128(8A)) will be resolved in accordance with the following procedure, except at institutions where a varied procedure has been approved by the merit system director in accordance with 3.129(1). Employees in an initial probationary period will be allowed access to the grievance procedure with the right to appeal in writing at steps within the institution. The institutional representative may permit an oral presentation at any step if the institutional representative deems one necessary. At each step of the grievance procedure, the employee may be represented by one or two persons of the employee's choosing. The name of such representatives will be noted on the written grievance and on each subsequent appeal. Presentations, reviews, investigations, and hearings held under this procedure may be conducted during working hours, and employees who participate in such meetings will not suffer loss of pay as a result thereof.

If an employee does not appeal a decision rendered at any step of this procedure within the time prescribed by these rules, the decision will become final. If an institutional representative does not reply to an employee's grievance or appeal within the prescribed time, the employee may proceed to the next step. With the consent of both parties, any of the time limits prescribed in these rules may be extended.

Step 1. Dissatisfied employees will first discuss their problem with their immediate supervisor. It is presumed that the majority of disputes, complaints, or misunderstandings will be resolved at this point. If the employee is still dissatisfied after such discussion, the employee may within ten days after the occurrence of the matter leading to the grievance or within ten days after such time that the employee has, or could reasonably be expected to have, knowledge of such occurrence, file a written grievance with the employee's immediate supervisor. A written grievance will contain a brief description of the complaint or dispute and the pertinent circumstances and dates of occurrence. It will specify the institutional or merit system rule which has allegedly been violated and will state the corrective action desired by the employee. The supervisor will review the grievance with the employee and will transmit the supervisor's decision to the employee in writing within five days after receiving the grievance.

Step 2. If the employee is not satisfied with the decision of the supervisor, the employee may within five days after receiving that decision appeal it to the department head. Such an appeal will be in writing and will contain all of the information included in the initial grievance, the decision of the supervisor, and any other pertinent information the employee may wish to submit. The appeal will be signed and dated by the employee. The department head will investigate the grievance and will give the employee or a representative of the employee's choosing the right to present the employee's case orally. The department head may affirm, reverse, or modify the supervisor's decision and will notify the employee of the decision in writing within ten days after receiving the appeal.

Step 3. If the employee is not satisfied with the decision of the department head, the employee may within five days after receiving that decision, appeal it to the dean of the college or the head of the major operating division in which employed. The dean or the division head and the resident director or designee(s) will jointly represent the institution at this step of the appeal procedure. The appeal will be in writing and will include all of the information included in the initial grievance and subsequent appeals, all the decisions related thereto, and any other pertinent information the employee may wish to submit. The appeal will be signed and dated by the employee.

The dean of the college or head of the division and the resident director or designee(s) will investigate the grievance and will give the employee or a representative of the employee's choosing the right to present the employee's case orally. The institutional representatives may affirm, reverse, or modify the decision of the department head, and will notify the employee of their decision in writing within ten days after receiving the appeal.

Step 4. If the employee is not satisfied with the decision rendered at Step 3 of the grievance procedure, the employee may within five days after receiving that decision appeal it to the chief administrator of the institution. The appeal will be in writing and will include all of the information included in the initial grievance and subsequent appeals, all decisions related thereto, and any other pertinent information the employee may wish to submit. The appeal will be signed and dated by the employee.

The chief administrator or the chief administrator's designee will investigate the grievance and will give the employee the right to present the employee's case orally. The chief administrator may affirm, reverse, or modify the decision rendered at Step 3 and will notify the employee of the administrator's decision in writing within ten days after receiving the appeal.

Step 5. Employees not satisfied with the decision rendered under Step 4 may within five days after receiving that decision request a hearing before an arbitrator. Such a request will be in writing, will include all of the information included in the initial grievance and subsequent appeals, all of the decisions related thereto, and any other pertinent information the employee may wish to submit.

The appeal will be signed and dated by the employee and will be directed to the merit system director who will arrange for a hearing before an arbitrator as prescribed under 3.129(2). The arbitrator will be expected to render a decision within 30 calendar days following the conclusion of the hearing.

The merit system director shall have the right to rule whether a case is grievable and arbitrable under the merit system. The merit system director shall have the right to refuse to refer to arbitration any grievance not found to be in full compliance with these rules involving the grievance procedure. The board of regents shall retain jurisdiction to review decisions of the merit director as to whether a matter is grievable or arbitrable upon appeal by an employee.

3.129(1) Institutional grievance procedure. An institution may develop a grievance procedure for all or a segment of its employees that varies from the procedure prescribed in 681—3.129(8A), provided that such a procedure begins with discussion between the employee and the employee's immediate supervisor and provides for a final hearing in accordance with Step 5 of the grievance procedure prescribed herein. Such an institutional procedure will incorporate all the rights provided employees in this chapter, will be made known to the employees to whom it applies, and must be approved by the merit system director. In the absence of an approved institutional procedure, 681—3.129(8A) will apply.

3.129(2) Appeals. The board of regents will approve the use of a single arbitrator in hearing an appeal. The selection of the arbitrator shall be made from a panel of arbitrators as referred from the Federal Mediation and Conciliation Service with a preference for those Iowans so certified.

The arbitrator will hear a dispute appealed to the last step of the grievance procedure and render a decision thereon subject only to review by the courts.

The arbitrator will establish procedures for the conduct of the hearing in a fair and informal manner that will afford each party reasonable and ample opportunity for case presentation and to rebut the presentation of the other. The arbitrator will be expected to render a decision to the involved parties and to the board of regents within the prescribed time.

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681—3.130 to 3.139 Reserved.

VACATIONS AND LEAVES OF ABSENCE

681—3.140(8A) Attendance. Employing departments will establish work schedules and other regulations regarding attendance that they deem necessary in accordance with these rules and the policy and rules of their institution, and such schedules and rules will be made known to affected employees.

681—3.141(8A) Vacations. Permanent and probationary employees will accrue and take vacations as provided by law. Employees will be entitled to take only that vacation time which they have accrued and while employee preferences will be given major consideration, employing departments will have final authority to schedule vacations.

Permanent and probationary part-time employees will accrue vacation in an amount equivalent to their fractional employment. An employee who is transferred, promoted or demoted from one position to another position under this system will not lose any accumulated vacation time as a result thereof.

681—3.142(8A) Holidays. Permanent and probationary employees will be granted holidays approved by the board of regents.

681—3.143(8A) Sick leave. Permanent and probationary employees will accrue sick leave as provided by law and will be entitled to such leave on presentation of satisfactory evidence. Permanent part-time employees will accrue sick leave in an amount equivalent to their fractional employment, and no employees will be granted sick leave in excess of their accumulation.

An employee who is transferred, promoted or demoted from one position to another position under this system will not lose any accumulated sick leave as a result thereof.

A permanent employee who has recovered after exhausting all accumulated sick leave and vacation time and has a medical release to return to work will, at the employee's request, be placed on the reemployment list for the class the employee previously occupied and on reemployment lists for lower level classes for which the employee is qualified in accordance with 681—3.67(8A) to 681—3.70(8A) for a period of up to two years from the date the employee was released to return to work. Such employee acceptance of reemployment in a lower class will not affect the employee's standing on the reemployment list for the class that the employee formerly occupied. If reemployment occurs within two years of an employee's release to return to work following a medically related disability, prior

service credit shall be restored. After two years on the reemployment eligibility list, the employee's name shall be removed.

[ARC 9812B, IAB 10/19/11, effective 11/23/11]

681—3.144(8A) Military leave. Permanent and probationary employees will be granted military leave as provided by law, with pay not to exceed 30 calendar days in a calendar year.

681—3.145(8A) Family leave. Eligible employees will be granted family leave in accordance with federal law and board of regents and institutional policies and procedures.

681—3.146(8A) Court and jury service. When, in obedience to the subpoena or direction by proper authority, employees appear as witnesses or serve as members of juries in any public or private litigation, they will be entitled to their regular compensation provided they surrender to their employing institution any pay they receive, other than reimbursement for travel or personal expenses, for such service.

681—3.147(8A) Voting leave. If an employee's working hours do not allow a three-hour period outside of working hours during which the polls are open, any person entitled to vote in a public election is entitled to time off from work with pay on any public election day for a period not to exceed three hours in length. Application for time off for voting should be made to the employee's supervisor prior to election day. The time to be taken off may be designated by the supervisor.

681—3.148(8A) Family care and funeral leave. An employing department will, when satisfied by evidence presented, grant an employee time off with pay:

1. Not to exceed three days for each occurrence in the case of death in the employee's immediate family;
2. Not to exceed one day for each occurrence for service as a pallbearer at the funeral of a person not a member of the employee's immediate family; and
3. Not to exceed 40 hours a year for the care of or necessary attention of ill or injured members of the employee's immediate family. Employees may carry over up to 40 hours of unused family care leave to the next year, for a maximum utilization of 80 hours in the next year.

All such time off will be charged to the employee's sick leave and will not be granted in excess of the employee's accrued leave. For the purpose of this rule, "immediate family" is defined as the employee's spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee's spouse, and other persons who are members of the employee's household.

[ARC 9812B, IAB 10/19/11, effective 11/23/11]

681—3.149(8A) Leave of absence without pay. In the best interests of the institution and its employees and with approval of the resident director, a department head may grant an employee's requests for a leave of absence without pay for up to one year. With the same approval, such a leave may be extended for no more than one additional year.

On conclusion of a leave of absence without pay, employees, if qualified, will be returned to the position from which they were granted leave or to another position in the same class. If such a position no longer exists, the layoff provisions of these rules will take effect.

681—3.150(8A) Election leave. Employees who become candidates for public office will be granted election leaves as provided by law.

681—3.151(8A) Disaster service volunteer leave. Subject to the approval of the appointing authority, an employee who is a certified disaster service volunteer for the American Red Cross may, at the request of the American Red Cross, be granted leave with pay to participate in disaster relief services relating to a disaster in the state of Iowa. Such leave shall be only for hours regularly scheduled to work and shall

not be for more than 15 workdays in a fiscal year. Employees granted such leave shall not lose any rights or benefits of employment while on such leave. An employee while on leave under this rule shall not be deemed to be an employee of the state for purposes of workers' compensation or for the purposes of the Iowa tort claims Act.

This rule is intended to implement Iowa Code Supplement section 8A.413 and Iowa Code section 262.9(2).

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For additional history, see individual divisions within Chapter 3.

REVENUE DEPARTMENT[701]

Created by 1986 Iowa Acts, Chapter 1245.

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CHAPTER 18
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD
OF TRANSACTION OR USAGE
[Prior to 12/17/86, Revenue Department[730]]

701—18.1(422,423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the governmental agencies shall be exempt from sales tax, but such purchases shall be taxable to the purchaser under the provisions of the use tax law. Persons making purchases from the United States government, unless exempt from the provisions of Iowa Code section 422.44, shall report and pay use tax at the current rate on the purchase price of such purchases.

This rule is intended to implement Iowa Code sections 422.44 and 423.3.

701—18.2(422,423) Sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes shall be taxable.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, tax shall be collected and remitted to the department, unless the sale is specifically exempt.

If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes application for a refund of the motor vehicle fuel tax.

The gross receipts from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. Gas converter equipment which might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(11), 423.1 and 423.2.

701—18.3(422,423) Chemical compounds used to treat water. Chemical compounds placed in water which is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water which is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds which are used to treat water that is not sold at retail or which are not used directly in processing shall be subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and does become a part of the finished product, shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1, and 423.2.

701—18.4(422) Mortgages and trustees. Pursuant to the provisions of a chattel mortgage, the receipts from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

The tax applies to inventory and noninventory goods provided the owner is in the business of making retail sales of tangible personal property or taxable services. In *Re Hubs Repair Shop, Inc.* 28 B.R. 858 (Bkrty. 1983).

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1 and 423.2.

701—18.5(422,423) Sales to agencies or instrumentalities of federal, state, county and municipal government.

18.5(1) The gross receipts from the sale of tangible personal property or enumerated taxable services made directly by or to the United States government or to recognized agencies or departments of the United States government shall not be subject to sales tax.

The gross receipts from sales at retail made directly to patients, inmates or employees of an institution or department of the United States government shall be taxable, since they are not made directly to the government. However, sales similarly made by post exchanges and other establishments organized and controlled by federal authority shall not be subject to sales tax.

18.5(2) The gross receipts from sales to the United States government, state of Iowa, or federal bureaus, departments, or instrumentalities are not taxable. A sale to government occurs only if a government, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. No sale to government occurs if a government pays some portion of the cost of sale of an item of tangible personal property but title to and ownership of the property are transferred to another person as a result of the sale. See *AVCO Manufacturing Corporation v. Connelly*, 145 Conn. 161, 140 A.2d 479 (1958) and *Akron Home Medical Services, Inc. v. Lindley*, 25 Ohio St.3d 107, 495 N.E.2d 417 (1986).

EXAMPLE A: Patient A purchases a hospital bed from a drugstore. A percentage of patient A's bill is paid by federal funds from Medicaid. Patient A has purchased a hospital bed, not the federal government, and Iowa tax is due as a result of this sale.

EXAMPLE B: A is a federal government employee. A stays at a hotel while on government business and eats meals there. A pays for the hotel room (treated as the sale of tangible personal property under Iowa sales tax law) and the meals with a credit card. The credit card was issued in A's name, and the cost of the room and meals is billed to A, who pays it. The federal government later reimburses A the entire cost of the room and meals. A has purchased the room and meals, and Iowa sales tax should be charged accordingly.

EXAMPLE C: B is a federal government employee who eats at a restaurant while on government business. B uses a credit card to pay for the meal. The credit card is issued in B's name, but the cost of the meal is billed to the U.S. government which pays that cost. In this situation, the government is the purchaser of the meal on B's behalf, and the sale is exempt from tax.

See rule 701—34.12(423) for an example of the application of this subrule to the motor vehicle use tax.

18.5(3) The gross receipts from the sale of goods, wares, merchandise, or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of human services, state department of transportation, and all divisions, boards, commissions, agencies, or instrumentalities of the state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except the sale of goods, wares, merchandise or services used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, pay television service, or heat to the general public, shall be exempt. The exclusion from exemption for municipally owned pay television service is applicable to sales occurring and services provided on and after July 1, 1991. On and after April 1, 1992, providing sewage service or solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality shall be taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information). Goods, wares, merchandise, or services used for public purposes and sold to any municipally owned solid waste facility which sells all or part of its processed waste as a fuel to a municipally owned public utility shall be exempt.

EXAMPLES:

a. A group of exempt instrumentalities, such as cities, issues bonds to finance the construction of a sewage disposal facility. X, a corporation, purchases the bonds but is not involved in the project in any other way. Since X does not enjoy the benefits of earnings of the solid waste facility, the exemption provided the instrumentalities is applicable.

b. Corporation Y, which is an instrumentality of the federal government and which Congress has allowed by statute to be subject to state sales and use taxes, purchases tangible personal property. Said purchases are subject to tax because the profits of the corporation are distributed to the stockholders thereof.

c. An instrumentality of government includes an area agency on aging as designated by the Iowa department on aging pursuant to Iowa Code section 231.32.

This tax exemption does not apply to independent contractors who deal with agencies, instrumentalities, or other entities of government. These contractors do not, by virtue of their contracting with governmental entities, acquire any immunity or exemption from taxation for themselves. Sales to these contractors remain subject to tax, even if those sales are of goods or services which a contractor will use in the performance of a contract with a governmental entity. This principle is applicable to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor. See 701—Chapter 19. See also *NLO, Inc. v. Limbach*, 613 N.E.2d 193, 66 Ohio St.3d 389 (1993); *Bill Roberts Inc. v. McNamara*, 539 So.2d 1226 (La. 1989) reh. den. April 27, 1989; *White Oak Corporation v. Department of Revenue Services*, 503 A.2d 582, 198 Conn. 413 (1986).

This rule is intended to implement Iowa Code section 422.45(5).

701—18.6(422,423) Relief agencies.

18.6(1) Relief agency means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work. Nonexclusive examples of relief agencies are Salvation Army, Royal Neighbors, and Masonic Lodge. The sales of tangible personal property or enumerated services to relief agencies are subject to tax. A relief agency may apply to the director for refund of the amount of tax imposed and paid by it, upon the purchase of goods, wares, merchandise, or services rendered, furnished, or performed that are used for free distribution to the poor and needy.

18.6(2) Persons are determined to be in the poor and needy category when their incomes and resources are at or below poverty level. The department will use federal poverty guidelines in making this determination.

18.6(3) Listed below are some examples where the tax may or may not be refunded to the relief agency:

EXAMPLE: A relief agency purchases clothing for free distribution to a poor and needy person. The tax is refundable.

EXAMPLE: A relief agency pays the gas, light, or telephone bill for a person who is poor and needy. The tax is refundable.

EXAMPLE: An agency purchases items of clothing for residents of their living facility, and is partially reimbursed by the person using the items based upon the recipient's ability to pay. Tax on the portion of cost not recovered by the agency can be claimed as a refund of tax paid by using formula stated in 18.6(6).

18.6(4) Demolition v. repair costs. A nonprofit noneducational relief agency is not entitled to a refund of sales tax paid by contractors on building materials used in the alteration, expansion, repair, remodeling or construction of the facility since the materials were sold tax paid to the contractor who is the consumer of the material by statute. See Iowa Code section 422.42(9). However, the relief agency would be entitled to a refund of sales tax paid on the cost of the demolition of the building since the demolition of the building indirectly benefited the poor and needy. 1968 O.A.G. #841.

EXAMPLE: A relief agency, which is not part of a governmental unit, operates a home or orphanage for persons who are poor and needy or for orphan children. Food, lodging, and necessary items are furnished free-of-charge to the residents. The relief agency would be entitled to a refund of any taxes paid to operate this facility; such as, but not limited to, lights, heat, water, telephone, and repair items or services needed to maintain the facility.

18.6(5) Claims for refund must be filed quarterly with the department within 45 days after the end of the quarter for which the refund is claimed. Claims are to be submitted on forms provided by the department.

The claim shall include the following information:

- a. The total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed used for free distribution to the poor and needy.
- b. List the persons making the sales to the relief agency.
 1. Include the date of the sale.
 2. Include the total amount expended, itemizing sales tax.
 3. Include the date of payment.
 4. Include the check number, receipt number, or paid invoice verifying payment.
- c. List the total operating income received (residents, donations, etc.)
- d. List the operating income received from residents only.
- e. The claim shall be signed by an authorized agent of the relief agency.

18.6(6) When a relief agency receives part of its operating income from the poor and needy it is serving, this income will be considered in computing the tax refund paid upon sales to it of products or services used for free distribution to the poor and needy.

To reasonably approximate the correct amount of tax to be refunded, where only a portion of the tax qualifies for refund, a formula will be used by the department. The prescribed formula the department will allow is operating income received from the poor and needy served divided by total operating income received. This percentage will be multiplied by the applicable gross receipts which are considered refundable to arrive at the correct amount of tax to be refunded.

If a person requests an alternative formula, the person shall first list the reasons why an alternative formula is necessary and, secondly, shall outline the proposed formula in detail. If approval is given, the department reserves the right to withdraw the approval or require adjustments in the formula upon notice to the person. Additional refunds or assessments may be made if an audit discloses the formula is incorrect.

This rule is intended to implement Iowa Code sections 422.42(7), 422.43, 422.47, 423.1 and 423.2.

701—18.7(422,423) Containers, including packing cases, shipping cases, wrapping material and similar items. The gross receipts from the sale of containers, labels, cartons, pallets, packing cases, wrapping paper, twine, bags, bottles, shipping cases, garment hangers, and other similar articles and receptacles sold to retailers or manufacturers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property which is sold either at retail or for resale shall be exempt from the tax.

For the purpose of this rule, producers, wholesalers and jobbers are considered retailers or manufacturers.

18.7(1) Sales to other than retailers or manufacturers.

a. Containers and all other specified items delivered with tangible personal property which are sold to a final buyer or ultimate consumer shall be exempt from the tax when no separate charge is made for the container. This group includes such items as boxes, cartons, pallets, paper bags, bottles, shipping cases, wrapping paper and twine. If a separate charge is made for the container, the sale of the container is subject to the tax. The sale of wrapping paper, paper bags and like items are subject to the tax when sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers to whom meat is sold. The wrapping paper and tape would be exempt from tax as being purchased as a packaging material of tangible personal property sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who own the meat. The meat locker only performs the service of processing the meat. The wrapping paper and tape are subject to tax as they were not purchased for packaging or for the facilitating of transportation of tangible personal property sold at retail, but were used in the rendering of a service.

b. Packing paper, lining paper, paper used to line boxes and crates, and similar items shall be exempt from the tax if delivered with tangible personal property ultimately sold at retail when no separate charge is made for the paper.

18.7(2) Labels, tags and nameplates. Sales of labels, tags, and nameplates attached to products for the benefit of the vendor such as shipping tags, price tags and instructions to cashiers are subject to the tax, unless such items are sold to manufacturers and retailers for packaging or facilitating the transportation of tangible personal property ultimately sold at retail. Labels, tags or nameplates attached to products for the benefit of the final consumer which describe contents, or which relate to the product and are affixed to the product, are exempt from tax.

18.7(3) Pallets. Pallets purchased by manufacturers or retailers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property ultimately sold at retail shall be exempt from the tax.

18.7(4) Garment hangers. Garment hangers purchased by manufacturers or retailers and used to facilitate the transportation of tangible personal property or garment hangers delivered with tangible personal property ultimately sold at retail when no separate charge is made are exempt from tax.

Garment hangers used merely to display tangible personal property are taxable.

This rule is intended to implement Iowa Code sections 422.42(3), 422.45(19) and 423.1(1).

701—18.8(422) Auctioneers.

18.8(1) An auctioneer in making a sale, whether of tangible personal property or realty, is by virtue of this employment making the sale as the agent of the principal.

18.8(2) Where an auctioneer is conducting a sale and the principal meets the requirement of the casual sale exemption found in Iowa Code section 422.42(12), the gross receipts from the sale are exempt from the tax. See 1970 O.A.G. 774.

18.8(3) When an auctioneer is conducting a sale and the principal is in the business of making sales of tangible personal property or taxable services on a recurring basis, the gross receipts from the sale are taxable.

18.8(4) Where an auctioneer is selling tangible personal property that the auctioneer owns, the sale of the tangible property owned by the auctioneer is taxable.

This rule is intended to implement Iowa Code section 422.43.

701—18.9(422) Sales by farmers. The sale of grain, livestock or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing or human consumption and shall not be subject to tax.

Farmers selling tangible personal property not otherwise exempt to ultimate consumers or users shall hold a permit and collect and remit sales tax on the gross receipts from their sales.

701—18.10(422,423) Florists.

18.10(1) Florists are engaged in the business of selling tangible personal property at retail and shall be liable for payment of tax measured by the receipts from the sale of flowers, wreaths, bouquets, potted plants and other items of tangible personal property.

18.10(2) When florists conduct transactions through a florists' telephonic delivery association, the following rules shall apply when computing tax liability:

a. On all orders taken by an Iowa florist and telephoned to a second florist in Iowa for delivery in the state, the sending florist shall be liable for tax, measured at the current rate of tax on gross receipts from the total amount collected from the customer, except the cost of a telegram when a separate charge is made therefor.

b. In cases where a florist receives an order pursuant to which the florist gives telephonic instructions to a second florist located outside Iowa for delivery to a point outside Iowa, tax is not owing with respect to any receipts which the florist may realize from the transaction.

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

d. Rescinded IAB 2/28/96, effective 4/3/96.

18.10(3) Florists engaged in selling shrubbery, trees, and similar items. See rule 18.11(422,423). This rule is intended to implement Iowa Code section 422.43.

701—18.11(422,423) Landscaping materials. The gross receipts from the sale of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips and other similar landscaping materials, when used for landscaping and sold to final consumers, shall be subject to sales tax. For the purpose of this rule, “final consumer” ordinarily means the owner of the land to which the landscaping materials are applied, or a general building contractor when the landscaping contractor contracts with the general building contractor. When a landscaping contractor uses materials to fulfill a contract, the landscape contractor is considered the retailer of the landscaping materials and shall be obligated to collect sales tax on the selling price from the final consumer.

When the retailer of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips and other similar landscaping materials installs these items as a part of a contract for landscaping or improving land for a lump sum, the entire gross receipts shall be subject to tax. Any retailer’s charges for “landscaping” shall be taxable. See rule 701—26.62(422) for a description of this service. However, a retailer’s charges for nontaxable services are not taxable if contracted for separately; or, if no written contract exists, the charges are itemized separately on the invoice.

EXAMPLE: A sodding contractor agrees to furnish and install 20 yards of sod for the lump sum of \$20.00 per yard. The sodding contractor must charge the customer \$20.00 sales tax (5% x \$400.00).

EXAMPLE: XYZ Company enters into a contract for the landscaping of an existing office building. XYZ Company agrees to furnish shrubs at \$25.00 each, white rock for \$5.00 per bag and woodchips for \$4.00 per bag. XYZ Company also contracts to install all of the landscaping materials for a fee of \$25.00 per hour. XYZ Company’s hourly fee is taxable if paid for the service of “landscaping” or for some other taxable service, e.g., excavation. If the service is not taxable, the charge is excluded from tax because it was separately contracted for.

The gross receipts from the sale of uncut sod and unexcavated trees, shrubs, and rock shall not be subject to sales or use tax. This is considered a sale of intangible property and not the sale of tangible personal property.

This rule does not apply to the gross receipts from the sale of plants and trees which are eligible for purchase with food coupons under rule 701—20.1(422,423).

This rule is intended to implement Iowa Code sections 422.42, 422.45(12) and 423.1.

701—18.12(422,423) Hatcheries. The gross receipts from the sale of egg-type cockerel chicks, broiler chicks and turkey poults shall be subject to tax. If sale of domestic poultry is for breeding, see rule 701—17.9(422,423).

When pullets and poults are sold for production purposes, the receipts from the sales shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.13(422,423) Sales by the state of Iowa, its agencies and instrumentalities. The state of Iowa, its agencies and instrumentalities, are required to collect and remit tax on the gross receipts from taxable retail sales of tangible personal property and taxable services.

This rule does not apply to sales made by cities and counties in the state of Iowa which are specifically exempted from collecting tax by Iowa Code section 422.45(20).

This rule is intended to implement Iowa Code chapters 422 and 423.

701—18.14(422,423) Sales of livestock and poultry feeds. Tax shall not apply to the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption. Tax shall apply on feed sold for consumption by pets.

Antibiotics, when administered as an additive to feed or drinking water, and vitamins and minerals sold for livestock and poultry shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.15(422,423) Student fraternities and sororities. Student fraternities and sororities are not considered to be engaged in the business of selling tangible personal property at retail within the meaning of the sales tax law when they provide their members with meals and lodging for which a flat rate or lump sum is charged. A person engaged in the selling of foods and beverages to such organizations for use in the preparation of meals is making exempt sales at retail and shall not be liable for tax if the food purchases would be exempt under rule 701—20.1(422,423).

Student fraternities or sororities engaged in the business of serving meals to persons other than members for which separate charges are made, or owning and operating canteens through which tangible personal property is sold are deemed to be making taxable sales.

When student fraternities or sororities do not provide their own meals but are provided by caterers, concessionaires or other persons, such caterers, concessionaires or other persons shall be liable for the collection and remittance of tax with respect to their receipts from meals furnished. A similar liability is attached to persons engaged in the business of operating boarding houses, whether for students or other persons.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.16(422,423) Photographers and photostaters. Tax shall apply to the sale of photographs and photostat copies, whether or not produced to the special order of the customer and to charges for the making of photographs or photostat copies out of materials furnished by the customer. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

Tax shall not apply to the sale of tangible personal property to photographers and photostat producers which becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sale of materials to photographers or producers which is used in the processing of photographs or photostat copies.

18.16(1) *Sales of photographs to newspaper or magazine publishers for reproduction.* The sale of photographs by a person engaged in the business of making and selling photographs to newspaper or magazine publishers for reproduction shall be taxable.

18.16(2) Reserved.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.17(422,423) Gravel and stone. When a contract is entered between a contractor and a governmental body and the contract calls for a stockpile delivery along a road to be improved, it is a sale of tangible personal property to the governmental body. Transactions of this type are exempt from tax. When a contract not only provides for the sale and delivery of materials but also the conversion of the materials into realty improvements, the contractor is the ultimate consumer of the material used and shall be liable for tax. Tax shall apply on the purchase price of the material.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(5), 423.1 and 423.2.

701—18.18(422,423) Sale of ice. The sale of ice for human consumption which may be purchased with food coupons is exempt from tax. The sale of ice used for cooling is subject to tax. See rule 701—20.1(422,423).

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(12), 423.2 and 423.4.

701—18.19(422,423) Antiques, curios, old coins or collector's postage stamps. Curios, antiques, art work, coins, collector's postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail and shall be subject to tax.

18.19(1) Stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors shall be taxable.

18.19(2) The distinction between stamps which are purchased by a collector and stamps which are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government is that which determines whether or not a stamp is taxable or not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, it shall not be subject to either sales or use tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.20(422,423) Communication services. This rule applies to sales of communication services billed prior to November 23, 2011. For communication service, telecommunication service, ancillary service and other related communication service billed on or after November 23, 2011, refer to 701—Chapter 224, Iowa Administrative Code. The gross receipts from the sale of all communication services provided in this state are subject to tax. (Communication services are not subject to use tax prior to July 1, 2001. See rule 701—31.7(423).)

18.20(1) Definitions.

a. Communication service shall mean the act of providing, for a consideration, any medium or method for, or the act of transmission and receipt of, information between two or more points. Each point must be capable of both transmitting and receiving information if “communication” is to occur. The term “communication service” includes, but is not limited to, the transmission and receipt of sound, printed materials (including letters and materials printed by teletype), other images perceived visually and data encoded in computer languages. Any separate charge for the service of transmitting and receiving information between automatic data processing equipment and remote facilities shall be subject to tax, see paragraph 18.34(3)“c.”

b. Communication service is provided “in this state” only if both the points of origination and termination of the communication are within the borders of Iowa. Communication service between any other points is “interstate” in nature and not subject to tax.

c. “Gross receipts” from the sale of communication service in this state shall mean all charges to any person which are necessary for the ultimate user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 18.20(4)). Such charges shall be taxable if the charges are necessary to secure communication service in this state even though payment of the charge may also be necessary to secure other services. Any charge necessary to secure only interstate communication service shall not be subject to tax if the nature of the service is separately stated and the charge for the service separately billed. For the present, the charges imposed by the Federal Communications Commission and referred to as “access charges for interstate or foreign access services” to an “end user” shall not be subject to tax if separately stated and billed.

Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. Such charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

If company A collects gross receipts from ultimate users for communication services performed in this state by company B, company A shall treat those gross receipts as its own, collect tax upon them, and remit the tax to the department. The situation is similar to a consignment sale of tangible personal property, and tax must be remitted by the company collecting the gross receipts from the users of the communication services.

As of April 4, 1990, the amount of a surcharge for enhanced 911 emergency telephone service shall not be subject to sales tax if the amount is no more than \$1 per month per telephone access line and the surcharge is separately identified and separately billed. An enhanced 911 emergency telephone service surcharge is one which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point.

d. Paging services. A one-way paging service is not a taxable enumerated service in Iowa because one-way paging only receives information and is not capable of transmitting information. As a result, this type of pager service is not a two-way transmission.

18.20(2) This subrule is applicable to various specific circumstances involving the sale of communication services.

a. Companies which bill their subscribers for communication services on a quarterly, semiannual, annual or any other periodic basis shall include the amount of such billings in their gross receipts. The date of the billing shall determine the period for which sales tax shall be remitted. Thus, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the gross receipts contained in the bill shall be included in the sales tax return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a sales tax deposit to the department.

b. The gross receipts from the service of transmitting messages, night letters, day letters and all other messages of similar nature between two or more points within this state are subject to sales tax.

c. Receipts from communication services performed for all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government, and private, nonprofit educational institutions in this state for educational purposes are exempt from tax, except sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax.

18.20(3) This subrule is specifically applicable to companies and other persons providing telephone service in this state. Any reasoning contained in this subrule may also be applied to companies or other persons providing other communication services.

a. All companies must have a permit for each business office which provides communication service in this state. The companies must collect and remit tax upon the gross receipts from the operation of such offices.

b. If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax shall be computed on the minimum amount guaranteed or the actual taxable gross receipts collected whichever is the greater.

c. In computing tax due, the federal taxes identified as such, separately billed and payable by the customer shall be excluded from gross receipts. If the taxes are not separately billed, they shall be subject to Iowa sales tax.

d. Telegrams and like charges made to the accounts of subscribers and billed by companies providing telephone service which appear on the subscribers' toll bills are subject to tax.

e. Charges for directory assistance service rendered in this state shall be subject to tax. Charges for directory assistance service, separately stated and billed, shall not be subject to tax if the service is interstate in nature.

f. The gross receipts from the installation or repair of any inside wire which provides electrical current that allows an electronics device to function shall be subject to tax. Such gross receipts are from the enumerated service of electrical repair or installation, and are thus subject to tax. The gross receipts from "inside wire maintenance charges" for services performed under a service or warranty contract shall also be subject to tax. Depending on circumstances, such receipts are for the enumerated service of "electrical repair" or are incurred under an "optional service or warranty contract" for an enumerated service. In either event, the receipts are subject to tax. See rule 701—18.25(422,423).

g. The gross receipts from the rental of any device for home or office use or to provide a communication service to others shall be fully taxable; such receipts are for the enumerated service of "rental of tangible personal property." The gross receipts from rental include rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device which is included in the gross receipts for the rental of the device shall also be subject to tax.

h. The sale of any device, new or used, in place at the time of sale on the customer's premises or sold to the customer elsewhere is the sale of tangible personal property, and thus a sale subject to tax. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it does or does not come within the purview of the casual sales exemption, see Iowa Code section 422.42(2)

and subrule 18.28(3). Other exemptions may be applicable as well. See Iowa Code section 422.45 and 701—Chapter 17.

i. The gross receipts for the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment shall, as a general rule, be subject to tax whether the customer or purchaser is billed by way of a flat fee or flat hourly charge covering all costs including labor and materials, or by way of a premises visit or trip charge, or by a single charge covering and not distinguishing between charges for labor and materials, or is billed by a charge with labor and material segregated, or is billed for labor only. An exception is this: If the gross receipts are for services on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, the gross receipts shall not be subject to tax. For further information concerning the conditions under which such gross receipts for repair or installation would not be subject to tax, see rule 701—19.1(422,423) and 701—subrule 26.2(1).

j. If a company bills a handling charge to a customer for sending the customer an electronic device by mail or by a delivery service, this charge shall constitute a part of the gross receipts from the sale of the device and shall be subject to tax. The gross receipts of a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the gross receipts from the sale of the property itself and thus subject to tax.

k. The purchase or rental of tangible personal property by companies providing communication services shall be subject to tax.

l. The amount of any deposit paid by a customer to a company providing communication service if returned to the customer shall not be subject to tax. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service shall be included in gross receipts or gross taxable services and shall be subject to tax.

m. On and after July 1, 1997, the gross receipts from sales of prepaid telephone calling cards and prepaid authorization numbers are subject to tax as sales of tangible personal property.

18.20(4) When one commercial communication company furnishes another commercial communication company services or facilities which are used by the second company in furnishing communication service to its customers, such services or facilities furnished to the second company are in the nature of a sale for resale; and the charges, including any carrier access charges, shall be exempt from sales tax. The charges for services or facilities initially purchased for resale and subsequently used or consumed by the second company shall be subject to tax, and the tax shall be collected and paid by the seller unless the seller has taken a valid exemption certificate in good faith from the purchaser and other requirements of 701—subrule 15.3(2) are met.

18.20(5) Prior to July 1, 1999, charges for access to or use of what is commonly referred to as the “Internet” or charges for other contracted on-line services are the gross receipts from the performance of a taxable service if access is by way of a local or in-state long distance telephone number and if the predominant service offered is two-way transmission and receipt of information from one site to another as described in paragraph “a” of subrule 18.20(1). If a user’s billing address is located in Iowa, a service provider should assume that Internet access or contracted on-line service is provided to that user in Iowa unless the user presents suitable evidence that the site or sites at which these services are furnished are located outside this state.

On and after July 1, 1999, gross receipts from charges paid to a provider for access to an on-line computer service are exempt from tax. An “on-line computer service” is one which provides for or enables multiple users to have computer access to the Internet. Charges paid to a provider for other contracted on-line services which do not provide access to the Internet and which are communication services remain subject to Iowa tax through May 14, 2000.

On and after May 15, 2000, the furnishing of any contracted on-line service is exempt from Iowa tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

18.20(6) The gross receipts paid for the performance of the service of sending or receiving any document commonly referred to as a “fax” from one point to another within this state are subject to sales tax. See 18.20(1)“a.” Gross receipts paid for the service of providing a telephone line or other

transmission path for the use of what is commonly called a “fax” machine are the gross receipts from the performance of a taxable service if the points of transmission and receipt of a fax are in this state. See 18.20(1) “a” and “b.”

EXAMPLE A. Klear Kopy Services is located in Des Moines, Iowa. Klear Kopy charges a customer \$2 to transmit a fax (via its machine) to Dubuque, Iowa. The \$2 is taxable gross receipts. Midwest Telephone Company charges Klear Kopy \$500 per month for the intrastate communications on Klear Kopy’s dedicated fax line. The \$500 is also gross receipts from a taxable communication service.

EXAMPLE B. The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, break out the amount of a billing which is attributable to expenses for faxing. For example, “bill to John Smith for August, 1997, \$1,000 for legal services performed, fax expenses which are part of this billing—\$30.” The \$30 is not gross receipts for the performance of any taxable service, the faxing service performed being only incidental to the performance of the nontaxable legal services.

EXAMPLE C. The TUV Hospital is located in Cedar Rapids, Iowa. The surgeons successfully perform delicate brain surgery on patient W. To perform that surgery it was necessary for the surgeons to consult with a number of colleagues; the consultation was via E-mail. After the operation, the TUV Hospital sent patient W a bill for \$10,000 of nontaxable hospital services. Listed as an expense is “E-mail—\$200.” The E-mail services are performed incidentally to the nontaxable hospital services; therefore, the \$200 is not taxable gross receipts.

EXAMPLE D. D is a dentist practicing in Mason City, Iowa. D subscribes to an on-line service which, in return for a monthly fee, informs its subscribers of the latest dental surgery techniques and advises them about how these techniques can be applied to individual patients. After consultation on patient E’s problem through the on-line service, D performs complex surgery on patient E. D’s bill to patient E reads as follows: “dental reconstruction—\$2,750; on-line consultation portion—\$240.” The \$240 is not taxable gross receipts, this charge being incidental to the nontaxable charge for dental work.

18.20(7) *Communication service, telecommunications service, ancillary service, and other similar communication service.*

a. *Purpose.* This subrule covers various provisions related to communication service, telecommunications service, ancillary service, and other similar communication service.

b. *Definitions.*

(1) “*Air-to-ground radio telephone service*” means a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) “*Ancillary services*” means services that are associated with or incidental to the provision of a telecommunications service. The term includes, but is not limited to, detailed communications billing service, directory assistance, vertical service, and voice mail services.

(3) “*Call-by-call basis*” means any method of charging for telecommunications services where the price is measured by individual calls.

(4) “*Communications channel*” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(5) “*Communication service*” means the act of communicating using any system or the act of transmission and receipt of information between two or more points. Each point must be capable of both transmitting and receiving information if communication is to occur. The term “communication service” includes, but is not limited to, the transmission and receipt of sound, printed materials (including letters and other materials), other images perceived visually and data encoded in computer languages. Communication service also includes telecommunications service, ancillary service and other similar communication service.

(6) “*Conference bridging service*” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include telecommunications services used to reach the conference bridge.

(7) “*Customer*” means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the

telecommunications service is the customer of the telecommunications service. For purposes of sourcing sales of telecommunications services, the end user of the telecommunications service is the customer of the telecommunications service when the end user is not also the contracting party. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(8) "*Customer channel termination point*" means the location where the customer either inputs or receives the communications.

(9) "*Detailed telecommunications billing service*" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(10) "*Directory assistance*" means an ancillary service of providing telephone number information and address information.

(11) "*End user*" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(12) "*Fixed wireless service*" means a telecommunications service that provides radio communication between fixed points.

(13) "*Home service provider*" means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. § 124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(14) "*Interstate*" means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

(15) "*Intrastate*" means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

(16) "*Mobile telecommunications service*" means commercial mobile radio service; that is, a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves.

(17) "*Mobile wireless service*" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunications services that are provided by a commercial mobile radio service provider.

(18) "*Paging service*" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

(19) "*Pay telephone service*" means a telecommunications service provided through any pay telephone. Pay telephone service also includes coin operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(20) "*Place of primary use*" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, the place of primary use must be within the licensed service area of the home service provider.

(21) "*Postpaid calling service*" means the telecommunications service obtained by making a payment on a call-by-call basis, either through use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunication service.

(22) "*Prepaid calling service*" means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or

authorization code, whether manually or electronically dialed, and that are sold in predetermined units or dollars of which the number declines with use in a known amount.

(23) "*Prepaid wireless calling service*" means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(24) "*Private communication service*" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(25) "*Residential telecommunications service*" means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution.

(26) "*Service address*" means:

1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in numbered paragraph "1" of this subparagraph is not known, "service address" means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the locations in numbered paragraphs "1" and "2" of this subparagraph are not known, the service address means the location of the customer's place of primary use.

(27) "*Telecommunications service*" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. "Telecommunications service" does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;

2. Installation or maintenance of wiring or equipment on a customer's premises;

3. Tangible personal property;

4. Advertising, including but not limited to directory advertising;

5. Billing and collection services provided to third parties;

6. Internet access service;

7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service and audio and video programming services delivered by a commercial mobile radio service provider;

8. Ancillary service;

9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

(28) "*Value-added non-voice data service*" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form,

content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(29) “*Vertical service*” means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

(30) “*Voice mail service*” means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

c. Taxable communication service, telecommunications service, ancillary service, and other similar communication service. The sales price from the sale of communication service, telecommunications service, ancillary service, and other similar communication service is subject to the sales or use tax. The following is a nonexclusive list of services subject to the Iowa sales and use tax:

- (1) Air-to-ground radio telephone service;
- (2) Ancillary services except detailed communications billing service;
- (3) Conference bridging service;
- (4) Fixed wireless service;
- (5) Mobile wireless service;
- (6) Pay telephone service;
- (7) Postpaid calling service;
- (8) Prepaid calling service;
- (9) Prepaid wireless calling service;
- (10) Private communication service;
- (11) Residential telecommunications service.

d. Nontaxable communication service, telecommunications service, ancillary service, and other similar communication service. The following services are not subject to the Iowa sales and use tax:

- (1) Detailed communications billing service;
- (2) Internet access fees or charges;
- (3) One-way paging services that only receive information and are not capable of transmitting information;
- (4) Value-added non-voice data service;
- (5) Any charge necessary to secure only interstate communication service if the nature of the service is separately stated and the charge for the interstate service is separately billed.

e. Sourcing of telecommunications services.

(1) General sourcing principles apply to telecommunications services unless the service falls under one of the exceptions set out in paragraph “e.”

(2) Exceptions. The following telecommunications services and products are sourced in accordance with the principles set out in subparagraph (2):

1. Mobile telecommunications service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

2. Prepaid calling service is sourced as provided under Iowa Code section 423.15. However, if the seller has sufficient information available, the sale of prepaid wireless calling service may be sourced to the location of the place of primary use.

3. A sale of a private telecommunications service is sourced as follows:

- Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

- Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

- Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

- Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

4. The sale of Internet access service is sourced to the customer's place of primary use.

5. The sale of an ancillary service is sourced to the customer's place of primary use.

6. A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system or (b) information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

7. The sale of telecommunications service sold on a call-by-call basis is sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

8. The sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

9. The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

- A sale of mobile telecommunications services, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

- A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system or (b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

f. Bundled transaction.

- (1) A "bundled transaction" is the retail sale of two or more products where (a) the products are otherwise distinct and identifiable, and (b) the products are sold for one non-itemized price. A bundled transaction does not include the sale of any products in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.

- (2) In the case of a bundled transaction that includes any of the following: telecommunications service, ancillary service, Internet access, or audio or video programming service:

1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

2. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including but not limited to non-tax purposes.

3. The provisions of this subrule shall apply unless otherwise provided by federal law.

g. Direct pay permit. The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. The direct pay permit holder cannot use the direct pay permit for the purchase of communication service, telecommunications service, ancillary services, or other similar communication service. The seller should charge and collect the sales or use tax from the purchaser on the taxable sales of communication service, telecommunications service, ancillary services, and other similar communication service.

h. Credit. A taxpayer subject to sales or use tax on communication service, telecommunications service, ancillary service or other similar communication service who has paid any legally imposed sales or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdictions.

i. Sales of communication service, telecommunications service, ancillary service, or other similar communication service to the United States government or the state government of Iowa. Sales of communication service, telecommunications services, ancillary services, or other similar communication service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. In order to be a sale to the United States government or to the state government of Iowa, the government or agency involved must make the purchase of the services and pay directly to the vendor the purchase price of the services. Telecommunications service providers should obtain an exemption certificate from each agency for their records.

j. Retailers liable for collecting and remitting tax. Retailers that sell taxable communication service, telecommunications service, ancillary services, or other similar communication service are liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

This rule is intended to implement Iowa Code sections 34A.7(1)“c”(2), 422.42(2), 422.42(3), 422.43(9), 422.45(5), 422.45(8), 422.45 and 422.51(1) and Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1189, section 29.

[ARC 8021B, IAB 7/29/09, effective 9/2/09; ARC 9814B, IAB 10/19/11, effective 11/23/11]

701—18.21(422,423) Morticians or funeral directors. A mortician or funeral director is engaged in the business of selling both tangible personal property and funeral services. Examples of the former are caskets, other burial containers, flowers, and grave clothing. Examples of the latter are cremation, transportation by hearse and embalming. Tax is due only upon gross receipts from the sale of tangible personal property and taxable services, and not upon gross receipts from the sale of nontaxable services.

If a mortician or funeral director separately itemizes charges for tangible personal property, taxable services and nontaxable services, as required by the rules of the Federal Trade Commission, or Iowa Code section 523A.8(1)“b,” whichever is applicable, tax is due only upon the gross receipts from the sales of tangible personal property and taxable services. If contrary to the rules or the statute, or if the applicable rules are rescinded or the statute repealed, and the mortician or funeral director charges a lump sum to a customer covering the entire cost of the funeral without dividing the charges for sales of tangible personal property and taxable and nontaxable services, the mortician or funeral director shall report the full amount of the funeral bill less any cash advanced by the mortician or funeral director, with tax due on 50 percent of the difference. *Kistner v. Iowa State Board of Assessment and Review*, 224 Iowa 404, 280 N.W. 587 (1938). Cash advance items may include, but are not limited to, the following: cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians, singers, nurses, obituary notices, gratuities, and death certificates.

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, and grave clothing for resale, and may purchase these items from suppliers without payment of tax. The mortician or director should present the supplier with a certificate of resale as set out in rule 701—15.3(422,423). A mortician or director is considered to be the user or consumer of office furniture and equipment, funeral home furnishings, advertising calendars, booklets, motor vehicles and accessories, embalming equipment, instruments, fluid and other chemicals used in embalming, cosmetics, and grave equipment, stretchers, baskets, and other items if title or possession does not pass to the customer. *Kistner*; supra.

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

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.22(422,423) Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians. Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians shall not be liable for tax on services rendered such as examinations, consultations, diagnosis, surgery and other kindred services, nor on the applicable exemptions prescribed under 701—Chapter 20.

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual’s own use. For

example, the purchase for use in the office of prescription drugs would not be subject to tax nor would the purchase of prosthetic devices such as artificial limbs or eyes.

Sales of tangible personal property to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from tax. These include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling materials.

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

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

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

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

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(13-15), 423.2 and 423.4(4).

701—18.23(422) Veterinarians. Purchase of food, drugs, medicines, bandages, dressings, serums, tonics, and the like, but not to include tools and equipment, which are used in treating livestock raised as part of agricultural production is exempt from tax. Where these same items are used in treating animals maintained as pets for hobby purposes, sales tax is due. See rule 701—18.48(422, 423) for an exemption for machinery used in livestock or dairy production which may be applicable to veterinarians but should be claimed only with caution by them.

A veterinarian engaged in retail sales, in addition to furnishing professional services, must account for sales tax on the gross receipts from such sales.

This rule is intended to implement Iowa Code sections 422.42(3) and 422.43.

701—18.24(422,423) Hospitals, infirmaries and sanitariums. Hospitals, infirmaries, sanitariums, and like institutions are engaged primarily in rendering services. These facilities shall not be subject to tax on their purchases of items of tangible personal property exempt under 701—Chapter 20 when the items would be exempt if purchased by the individual and if the item is used substantially for the tax-exempt purpose. See rule 18.59(422,423) for an exemption applicable to sales of goods and furnishing of services on and after July 1, 1998, to a nonprofit hospital.

Hospitals, infirmaries, and sanitariums may be the purchasers for use or consumption of tangible personal property used or consumed in furnishing services. *Modern Dairy Co. v. Department of Revenue*, 413 Ill. 55, 108 N.E.2d 8 (1952). However, tangible personal property can be purchased for resale by these facilities and, if purchased for resale, is exempt from tax on the purchases. *Burrows Co. v. Hollingsworth*, 415 Ill. 202, 112 N.E.2d 706 (1953); *Fefferman v. Marohn*, 408 Ill. 542, 97 N.E.2d 785 (1951). Property is purchased for resale if the conditions in subrule 18.31(1) are applicable. See also 701—subrule 15.3(2) with respect to resale exemption certificates.

Depending upon the circumstances, a nonprofit facility may be a charitable institution or organization; a profit facility is not. *Northwest Community Hospital v. Board of Review of City of Des Moines*, 229 N.W.2d 738 (Iowa 1975); *Readlyn Hospital v. Hoth*, 223 Iowa 341, 272 N.W. 90 (1937). Sales by these nonprofit facilities would be exempt from tax if the requirements of Iowa Code section 422.45(3) are met. See rule 701—17.1(422,423).

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, House File 2513, and chapter 423.

701—18.25(422,423) Warranties and maintenance contracts.

18.25(1) In general—definitions. “Mandatory warranty.” A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. “Optional warranty.” A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller.

18.25(2) Mandatory warranties. When the sale of tangible personal property or services includes the furnishing or replacement of parts or materials which are pursuant to the guaranty provisions of the sales contract, a mandatory warranty exists. If the property subject to the warranty is sold at retail, and the measure of the tax includes any amount charged for the guaranty or warranty, whether or not such amount is purported to be separately stated from the purchase price, the sale of replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable. Labor performed under a mandatory warranty which is in connection with an enumerated taxable service is also exempt from tax.

18.25(3) Optional warranties. For periods after June 30, 1981.

a. The sale of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 422.43 is considered a sale of tangible personal property the gross receipts from which are subject to tax at the time of sale except as described below.

b. On and after July 1, 1995, the sale of a residential service contract regulated under Iowa Code chapter 523C is not considered to be the sale of tangible personal property, and gross receipts from the sales of these service contracts are no longer subject to tax, and the gross receipts from taxable services performed for the providers of residential service contracts are now subject to tax. See the examples below for more detailed explanation. A “residential service contract” is defined in Iowa Code subsection 523C.1(8) to be: a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

EXAMPLE A. John Jones purchases a residential service contract for \$3,000 on July 1, 1994. He pays \$150 of Iowa state sales tax. On December 1, 1994, his furnace malfunctions. The service company which sold Mr. Jones the contract pays Smith Furnace Repair \$700 to fix the furnace. No sales tax is due on the \$700 charge.

EXAMPLE B. Bob Jones purchases a residential service contract for \$3,000 on July 1, 1995. No sales tax is owing or paid. On December 1, 1995, his furnace becomes inoperable. The service company which sold Mr. Jones the contract pays Smith Furnace Repair \$900 to fix Mr. Jones’ furnace. Sales tax of \$45 is due based on the \$900.

c. On and after July 1, 1998, if an optional service or warranty contract is a computer software maintenance or support service contract and the contract provides for the furnishing of technical support services only and not for the furnishing of any materials, then no tax is imposed on the furnishing of those services under this subrule. If a computer software maintenance or support service contract provides for the performance of nontaxable services and the taxable transfer of tangible personal property, and no separate fee is stated for either the performance of the service or the transfer of the property, then state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of the contract. If a charge for the performance of the nontaxable service is separately stated, see subrule 18.25(5) below.

18.25(4) A preventive maintenance contract is a contract which requires only the visual inspection of equipment and no repair is or shall be included. The gross receipts from the sale of a preventive maintenance contract is not subject to tax.

18.25(5) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract which are for enumerated taxable services shall be subject to tax. Only parts and

not labor will be subject to tax where a nontaxable service is performed if the labor charge is separately stated.

This rule is intended to implement Iowa Code sections 422.42 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

701—18.26(422) Service charge and gratuity. When the purchase of any food, beverage or meals automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term “service charge” means either a fixed percentage of the total price of or a charge for food, beverage or meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, beverage or meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, beverage or meal it shall be considered a tip and not subject to tax.

Cohen v. Playboy Club International, Inc., 19 Ill. App. 3d 215, 311 N.E.2d 336; *Baltimore Country Club, Inc. v. Comptroller of Treasury*, 272 Md. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code section 422.43.

701—18.27(422) Advertising agencies, commercial artists, and designers.

18.27(1) Nontaxable services. Tax does not apply to charges by advertising agencies, commercial artists, or designers for services rendered that do not represent services that are a part of a sale of tangible personal property, or a labor or service cost in the production of tangible personal property. Examples of such nontaxable services are: writing original manuscripts and news releases; writing copy for use in newspapers, magazines, or other advertising, or to be broadcast on television or radio, compiling statistical and other information; placing or arranging for the placing of advertising in media, such as newspapers, magazines, or other publications; billboards and other facilities used in public transportation; and delivering or causing the delivery of brochures, pamphlets, cards, and similar items. Charges for such items as supervision, consultation, research, postage, express, transportation and travel expense, if involved in the rendering of such services, are likewise not taxable.

18.27(2) Agency fee or commission. When an amount billed as an agency “fee,” “service charge,” or “commission” represents a charge or part of the charge for any of the nontaxable services described under 18.27(1), the amount so billed is not taxable. Such charge by an advertising agency will be considered to be made for nontaxable services.

18.27(3) Items taxable. The tax applies to the entire amount charged to clients for items of tangible personal property such as drawings, paintings, designs, photographs, lettering, assemblies and printed matter. This includes the cost of typography and reproduction proofs when the latter is used as part of a paste-up, “mechanical” or assembly. Whether the items of property are used for reproduction or display purposes is immaterial.

18.27(4) Preliminary art. “Preliminary art” as used herein means roughs, visualizations, comprehensives and layouts prepared for acceptance by clients before a contract is entered into or approval is given for finished art. (“Finished art” as used herein means the final art used for actual reproduction by photo-mechanical or other processes.) Tax does not apply to separate charges for preliminary art, except where the preliminary art becomes physically incorporated into the finished art as for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction.

The charge for preliminary art must be billed separately to the client, either on a separate billing or separately charged for on the billing for the finished art. It must be clearly identified on the billing as preliminary art, of one or more of the types mentioned in the preceding paragraph. Proof of ordering or producing the preliminary art prior to date of contract or approval for finished art shall be evidenced by purchase orders of the buyer, or by work orders or other records of the seller.

The following situations are examples of when the sale of “finished art” is taxable:

a. Finished art which is sold to customers to be used for advertising purposes in newspapers, magazines or the like. After the advertiser contracts with the ad agency for the development of an advertising message or theme, the agency devises ideas (preliminary art) and produces the finished art. The finished art is then delivered to the advertiser or to an agent of the advertiser such as a printer or publisher who is under contract with the advertiser to publish the ad.

b. Finished art which is sold to customers, or their agents (e.g., printers), for use in producing printed material. The charge for finished art is taxable even though the art work may later be returned to the ad agency by the purchaser or the printer or used by the customer or the customer's agent to produce a nontaxable item. Since the finished art is not a part of the printed materials, the ad agency's customer is consuming the material and not buying it for resale, or using it in an exempt manner.

c. Finished art which is used to produce other tangible personal property sold by the ad agency such as letterhead stationery and business cards. The charge for such art is taxable as part of the selling price for such stationery or business cards. This is true whether or not the agency separately itemizes the charge for such stationery or business cards.

18.27(5) *Items purchased by agency, artist or designer.* An advertising agency, artist, or designer is the consumer of tangible personal property used in the operation of its business, such as stationery, ink, paint, tools, drawing tables, T-squares, pens, pencils, and other office supplies. Tax applies to the sale of such property to the agency, artist, or designer. Tax also applies where the agency, artist or designer is the consumer of taxable services.

The agency, artist, or designer is the seller of, and may purchase for resale, any item resold before use, or that becomes physically an ingredient or component part of tangible personal property sold, as, for example, illustration board, paint, ink, rubber cement, flap paper, wrapping paper, photographs, photostats, or art purchased from other artists. Tax also applies where the agency, artist, or designer is the seller at retail of taxable services.

In the event that an agency, artist, or designer is both a consumer and a retailer of such items of tangible personal property as noted in this subsection, such agency, artist or designer should:

a. Purchase such items without tax liability if the majority of the items are sold at retail and remit the tax at the time of resale or at the time such items are consumed in the operation of the business.

b. Pay tax to suppliers at the time of purchase if the majority of the items will be consumed in the operation of the business and deduct the original cost of any such items subsequently sold at retail when reporting tax on their returns.

18.27(6) *Construction.* Nothing contained in this rule shall be construed to provide for an exemption from tax for services expressly taxable in rules 701—26.17(422) and 26.39(422).

18.27(7) *Advertising agencies, commercial artists and designers as agent of client or as a nonagent.*

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

b. When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the gross receipts from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total amount received for such property. Further, nothing in this rule should be construed to be in variance with the opinion of the Iowa Supreme Court in *Rowe vs. Iowa State Tax Commission*, 249 Iowa 1207, 91 N.W.2d 548 (1958).

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

1. The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.

2. The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.

3. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

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

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

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

18.27(8) Scope. The scope of this rule is not confined simply to advertising agencies, commercial artists and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—18.28(422,423) Casual sales.

18.28(1) *Casual sales by persons not retailers or by retailers outside the regular course of business.* Casual sales are exempt from the Iowa sales and use taxes except for the casual sale of vehicles subject to registration, and vehicles subject only to the issuance of a certificate of title. On and after July 1, 1988, the casual sale of aircraft is also taxable. In order for a casual sale to qualify for exemption under this subrule, two conditions must be present: (1) the sale of tangible personal property or taxable services must be of a nonrecurring nature, and (2) the seller, at the time of the sale, must not be engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 422.43 or, if so engaged, the sale must be outside the regular course of the seller's business (Order of State Board of Tax Review, Martin Development Corporation, Docket No. 136, December 1, 1976, incorporating by reference Order of Department of Revenue Hearing Officer in Docket No. 75-28-6A-A, July 9, 1976). See subrule 18.28(2) for an explanation of the casual sale exemption applicable to the liquidation of a trade or business.

If either of the conditions above are lacking, no casual sale occurs. Moreover, prior to July 1, 1985, the casual sale exemption was limited to sales of tangible personal property, and casual enumerated taxable services did not qualify for the exemption. *KTVO, Inc. v. Bair*, Equity No. 385 Linn County District Court, September 5, 1975.

For the purposes of this subrule, the word "aircraft" refers to any contrivance now known or hereafter invented, which is designed or used for navigation of or flight in the air, for the purpose of transporting persons, property, or both or for crop dusting, aerial surveillance, recreational flying, or for providing some other service. By way of nonexclusive example, balloons, gliders, helicopters, and "ultra lights" are aircraft. Also included within the meaning of the word "aircraft" is any craft registered under Iowa Code section 328.20 or any successor statute thereto.

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

Two separate selling events outside the regular course of business within a 12-month period shall be considered nonrecurring. Three such separate selling events within a 12-month period shall be considered as recurring. Tax shall only apply commencing with the third separate selling event. However, in the event that a sale event occurs consistently over a span of years, such sale is recurring and not casual, even though only one sales event occurs each year. *Des Moines Police Department v. Bair*, Equity No. CE3-1591, Polk County District Court, November 1, 1976.

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

EXAMPLE: Corporation C is engaged in the business of lending money secured by collateral. In the course of such business, Corporation C must repossess some collateral and sell it at retail for purposes of payment of loans. Such sales recur from time to time. Notwithstanding that Corporation C is presumably not engaged in the business of selling tangible goods or services for a profit, since the sales are recurring, there is no casual sale. *S & M Finance Co., Fort Dodge v. Iowa State Tax Commission*, 1968, Iowa 162 N.W.2d 505.

EXAMPLE: F, a farmer, does not sell tangible personal property at retail or engage in the performance of any taxable services. F liquidates the farming business and hires a professional auctioneer to auction off many items of tangible personal property. Assuming this liquidation event is casual, all items sold by the auctioneer at retail are casual sales notwithstanding that many different sales to numerous different buyers may occur. See rule 18.8(422).

EXAMPLE: H, an insurance agency, holds a semiannual event to sell its used office furniture. Even though H does not regularly sell tangible personal property at retail, the casual sale exemption does not apply because the selling events are recurring. *Des Moines Police Department v. Bair*, Equity No. CE3-1591, Polk County District Court, November 1, 1976.

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

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

EXAMPLE: K, a corporation, is primarily engaged in the business of road construction. From time to time, it sells used capital assets and scrap materials reclaimed from its road construction work to individuals and businesses. It does not advertise itself as a retailer of these assets and materials but sells them as a matter of courtesy to persons who cannot purchase them elsewhere. After 42 years of operation, it decides to liquidate. Pursuant to that decision, K employs two auctioneers to sell its capital assets and ceases operation after its assets are sold. K had only one capital asset sale during the 12 months immediately preceding each liquidation auction sale. The auction sales are exempt casual sales under this subrule (1) because they are nonrecurring, and (2) because K is not a retailer of the capital assets sold during its liquidation. See *Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review*, 611 N.W.2d 495 (Iowa 2000).

EXAMPLE: L, a sole proprietorship, engaged in selling automobile parts at retail, incorporated. The assets of L are sold to the new corporation in exchange for stock and the new corporation now engages in selling automobile parts at retail. The casual sale exemption would apply, but only because of the exemption set out in subrule 18.28(2) infra, since the transfer involves a liquidation of L's business and

the sale of L's inventory to another person (the corporatin) which will continue to engage in a similar trade or business.

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

18.28(2) Special rules for casual sales involving the liquidation of a trade or business. When retailers sell all or substantially all of the tangible personal property held or used in the course of the trade or business for which retailers are required to hold a sales tax permit, the casual sale exemption will apply to exempt those sales only when the following circumstances exist: (1) the trade or business must be transferred to another person, and (2) the transferee must engage in a similar trade or business. The trade or business transferred refers to the place where the business is located since each taxable retail business must have a sales tax permit at each location. For purposes of this casual sale circumstance, it is irrelevant whether the retailer actually has a sales tax permit or not; rather, the relevant circumstance is that the retailer was required to have a sales tax permit. See *Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review*, 611 N.W.2d 495 (Iowa 2000). One effect of this is that a retailer who is closing as opposed to transferring a business and is selling inventory in the process of this closing is not entitled to claim the casual sale exemption under this subrule, but see subrule 18.28(1), and the resale exemption is always potentially applicable to sales of inventory. See the examples below for further explanation.

EXAMPLE: L, a hardware store, desires to liquidate the business. L had been selling tangible personal property at retail and was required to have an Iowa retail sales tax permit. L hires a professional auctioneer and all items of inventory, equipment, and fixtures are sold to various purchasers. These items consist of all or substantially all of the tangible personal property held or used by L in the course of the business for which a sales tax permit was required to be held. L, however, does not transfer the trade or business to anyone else. Under these circumstances, the casual sales exemption does not apply to the sale of the inventory, but see subrule 18.28(1) for criteria which determine whether the casual sales exemption applies to the equipment and fixtures.

EXAMPLE: The facts are the same as those in the previous example, except that L is liquidating its business because it attempted to build a new store and its entire inventory was destroyed by fire while in storage. An auctioneer sells L's equipment and trade fixtures to various purchasers. The auctioneer's sale of the equipment and trade fixtures is an exempt casual sale of the type described in subrule 18.28(1) because (1) it is nonrecurring, and (2) it is outside the usual course of L's business. See *Holland Bros. Construction Co., Inc.*, supra.

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

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

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

EXAMPLE: T, a restaurant, sells all of its tangible personal property held or used in the course of its business for which it was required to hold a sales tax permit to U. T also sells its trade or business to U. U engages in the business of operation of a dance hall and does not continue to operate the restaurant. This subrule's casual sales exemption will not apply, but see subrule 18.28(1) for the criteria of a casual sale exemption which could apply.

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

18.28(3) *Casual sales of services.* Special rule for services rendered, furnished, or performed on or after July 1, 1985. The "casual sale" of an enumerated service has occurred if the following circumstances exist:

a. The service was rendered, furnished, or performed on or after July 1, 1985; and

b. The service was rendered, furnished, or performed on a nonrecurring basis by a seller who, at the time of the sale of the service, is not engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 422.43, or, if so engaged, the sale was outside the regular course of the seller's business; or

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

EXAMPLE: V ordinarily engages in janitorial and building maintenance or cleaning which are taxable services; see rule 701—26.60(422). Once, as a favor to customer W, V cut customer W's lawn and otherwise performed the taxable service of "lawn care" for customer W. Since this performance of lawn care was not "within V's regular course of business" and was not "recurring," gross receipts from the lawn care are not subject to tax.

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

This rule is intended to implement Iowa Code sections 422.42(12), 422.45(6) and 423.4.

701—18.29(422,423) Processing, a definition of the word, its beginning and completion characterized with specific examples of processing.

18.29(1) *Processing—a definition.* For the purpose of these rules, "processing" means an operation or a series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N.W.2d 393 (Iowa 1970).

18.29(2) *The beginning of processing.* Processing begins when the "form, context, or condition" of tangible personal property is changed with the intent of eventually transforming the property into a saleable finished product. The severance of raw material from real estate is not processing, even if this severance results in a change in the form, context, or condition of the real estate. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N. W.2d 393 (Iowa 1970). Furthermore, transportation of raw material after it is severed from real estate but prior to the time the initial change in the form, context, or condition of the raw material occurs is not processing. *Southern Sioux County Rural Water System, Inc. v. Iowa Department of Revenue*, 383 N.W.2d 585 (Iowa 1986).

18.29(3) *The completion of processing.* Processing ends when the property being processed is in the form in which it is ultimately intended to be sold at retail, *Hy-Vee Food Stores v. Iowa Department of Revenue*, 379 N.W.2d 37 (Iowa App. 1985). The storage or transport of property after that property is transformed into a finished product is not a part of processing.

18.29(4) *Examples of when processing begins and ends.* The following examples are intended to clarify but not to contradict the explanation of processing set out in subrules 18.29(2) and 18.29(3).

EXAMPLE A: A company blasts limestone from the ground, bulldozers pick the limestone up and put it in trucks; these trucks transport the limestone to a crusher some distance from the quarry site. The first change in the “form” or “condition” of the limestone, while it is tangible personal property, occurs when the stone is crushed in the crusher. The blasting of the stone from the ground and its transport to the crusher would be acts preparatory to and not a part of processing. Thus, fuel used in the bulldozers and transport trucks would not be fuel used in processing, *Linwood Stone Products*, supra.

EXAMPLE B: Pumps remove water from underground wells and pump that water through pipes to a water treatment plant. At the treatment plant, the water passes initially through an aeration system which adds oxygen to it. At other points in the plant, potassium and chlorine are added to the water and iron is removed. After these acts are performed, clean, drinkable water exists. The first change, however, in the condition of the water occurs when it passes through the aeration system and oxygen is added to it. The withdrawal of the water from the ground and its transport to the aeration system would not be a part of processing. Thus, electricity used by the pumps which pump the water to the aeration system would not be used in processing. However, by way of contrast, electricity used to transport the water between, for example, the aeration system and the point where potassium is added to the water would be used in processing. *Southern Sioux Rural Water System, Inc.*, supra.

EXAMPLE C: Water is processed in a treatment plant. The last act at the plant necessary to render the water drinkable or a “finished product” is the addition of chlorine. After the addition of chlorine, the water is pumped first into wells and later into water towers where it is held for distribution. The pumping of this drinkable water from the point where the chlorine is added to the wells and the tower is not a part of processing because processing of the water ended with the addition of the chlorine; thus, electricity used in these pumps is not electricity used in processing. *Southern Sioux County Rural Water System, Inc.*, supra.

18.29(5) Integral part of the production of the product test. Certain activities may be exempt as part of processing if those activities are very closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Southern Sioux Rural Water System, Inc.*, supra. Merely because an activity is vital or essential to a processing operation does not make that activity exempt as part of processing unless the activity itself is closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Mississippi Valley Milk Producers Ass’n v. Iowa Dept. of Revenue*, 387 N.W.2d 611 (Iowa App. 1986). See the nonexclusive example below.

A manufactures nails. In A’s factory is a machine which draws steel into long rods the width of whatever nail A may wish to manufacture. After this machine draws the steel into the desired-size rods, the rods are moved to a second machine by a conveyor belt. This second machine cuts the rods into the length of nail which A desires. A second conveyor belt then transports these cut rods to a third machine which sharpens one end of the rod to a point and puts a “nail head” on the other end of the rod. The activities of the three machines are clearly processing, in that they are activities which change the form, context or condition of raw material, and as a result of those activities, marketable tangible personal property or a finished product is created. The two conveyor belts move the partially finished nails from one piece of processing equipment to another while processing is occurring. Since the activities of the conveyors are very closely interconnected with and an integral part of the operation of the various pieces of processing equipment while processing is occurring, the conveyor belts are involved in processing as well.

18.29(6) Other specific examples of processing. The Iowa Supreme Court has also stated that the following activities are processing: manufacturing ice, refrigerating cheese to age it from “green” to edible, refrigerating eggs to change their flavor, pasteurizing and subsequent refrigeration of milk, “hard” freezing of meat and butter for aging, canning vegetables and cooking foodstuffs; *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission*, 248 Iowa 497, 81 N.W.2d 437 (1957); and, *Mississippi Valley Milk Producers v. Iowa Dept. of Revenue and Finance*, 387 N.W.2d 611 (Ia. App. 1986), also crushing of “flat rock” limestone and treating limestone in kilns. *Linwood Stone Products Co. v. State Dept. of Revenue*, 175 N.W.2d 393 (Iowa 1970). See 701—subrule 17.3(2) for an expanded definition of processing with regard to food manufacturing.

18.29(7) Other department rules concerned with processing. Various sections of the Iowa Code set out activities which are defined by statute to be “processing”. The rules interpreting these statutes for the purposes of sales and use tax law are the following:

- a. 15.3(422,423) Certificates of resale, processing, and fuel used in processing.
- b. 17.2(422) Fuel used in processing—when exempt.
- c. 17.3(422,423) Electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax.
- d. 17.9(422,423) Sales of breeding livestock, fowl, and certain other property used in agricultural production. See 701—subrules 17.9(4), 17.9(5), 17.9(6), and 17.9(7) for processing exemptions.
- e. 17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing.
- f. 18.3(422,423) Chemical compounds used to treat water.
- g. 18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997.
- h. 18.58(422,423) Sales or rentals of machinery, equipment, and computers and sales of fuel and electricity to manufacturers and sales or rentals of computers to commercial enterprises for periods on and after July 1, 1997.
- i. 26.2(422) Enumerated services exempt. See 701—subrule 26.2(2) for the processing exemption.
- j. 28.2(423) Processing of property defined.
- k. 33.3(423) Fuel consumed in creating power, heat, or steam for processing or generating electric current.
- l. 33.7(423) Property used to manufacture certain vehicles to be leased.

701—18.30(422) Taxation of American Indians.

18.30(1) Definitions.

“*American Indians*” means all persons of Indian descent who are members of any recognized tribe.

“*Settlement*” means all lands within the boundaries of the Mesquakie Indian settlement located in Tama County, Iowa and any other recognized Indian settlement or reservation within the boundaries of the state of Iowa.

18.30(2) Retail sales tax—tangible personal property. Retail sales of tangible personal property made on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation, where delivery occurs on the reservation, are exempt from tax (*Bryan v. Itasca County*, 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 475-81 (1976)). Retail sales of tangible personal property made on a recognized settlement or reservation to Indians where delivery occurs off the reservation are subject to tax. Retail sales of tangible personal property made to non-Indians on a recognized settlement or reservation are subject to tax regardless of where the delivery occurs. Sales made to non-Indians are taxable even though the seller may be a member of a recognized settlement or reservation.

18.30(3) Retail sales tax—services. Sales of enumerated taxable services and sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Indians who are members of the tribe located on the recognized settlement or reservation where delivery of the service occurs are exempt from tax (*Bryan v. Itasca County*, 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 475-81 (1976)). Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Indians where delivery of the services occurs off a recognized settlement or reservation are subject to tax.

18.30(4) Off-reservation purchases. Purchases made by Indians off a recognized settlement or reservation are subject to tax if delivery occurs off the reservation. Purchases made by Indians off a recognized settlement or reservation are not subject to tax if delivery is made on the reservation to Indians who are members of the tribe located on that reservation.

See rule 701—33.5(423) for the taxation of tangible personal property and services where the state use tax may be applicable.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.45(1).

701—18.31(422,423) Tangible personal property purchased by one who is engaged in the performance of a service.

18.31(1) *In general. (Effective July 1, 1990)*

a. On and after July 1, 1990, tangible personal property purchased by one who is engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

b. Prior to July 1, 1990, in those circumstances in which tangible personal property is purchased by one who is engaged in the performance of a service and the property is transferred to the customer in conjunction with a performance of the service in a form or quantity which is capable of any fixed or definite price value, but the actual sale of the property is not indicated by a separate charge for the identifiable item, the burden of proving that the property was purchased for resale by one engaged in the performance of a service and not subject to tax at the time of purchase is upon the person engaged in the performance of a service who asserts this.

c. Tangible personal property which is not sold in the manner set forth in “*a*” or “*b*” above is not purchased for resale and thus is subject to tax at the time of purchase by one engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service and the person performing the service shall pay tax upon the sale at the time of purchase.

EXAMPLE: An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor’s clients regarding their accounts. Tax is due at the time the investment counselor purchases the envelopes if the clients are not billed for these items. Each envelope is transferred to a client in a form or quantity which is capable of a fixed or definite price value. However, there must also be an actual sale to the client (customer) of an item of personal property in order that there be a “resale” of the item.

An automobile repair shop purchases solvents which are used in cleaning automobile parts and thus in performing its automobile repair service. Tax is due at the time the automobile repair shop purchases the solvent since the solvents are not sold to the customer and, in this case, the item is not transferred to a customer in a form or quantity which is capable of a fixed or definite price value. Thus, the solvent is deemed consumed by the purchaser engaged in the performance of the service.

EXAMPLE: A retailer purchases television tubes tax-free where the retailer makes a separate charge for the tube to the customer and since the tube is transferred to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE: A beauty or barber shop purchases shampoo and other items to be used in the performance of its service. Tax is due at the time the beauty or barber shop purchases such items from its supplier, where the customers of the beauty or barber shop are not separately billed for the item, and because it is not transferred to the customer in a form or quantity capable of a fixed or definite price value, it is being consumed by the beauty or barber shop.

EXAMPLE: A car wash purchases water, electricity, or gas used in the washing of a car. The car wash would be the consumer of the water, electricity, or gas and tax is due at the time of purchase. The items purchased by the car wash are not transferred to the customer in a form or quantity capable of a fixed or definite price value, and the customer is not billed for the item.

EXAMPLE: An accounting firm purchases plastic binders which are used to cover the reports issued to its customers. These binders would be subject to tax at the time of purchase by the firm where the customer of the firm is not billed for the item, there being no sale to the customer in such a case.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who provide the locker with the meat. These materials would be subject to tax at the time of purchase by the meat locker because they are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE: A jeweler purchases materials such as main springs and crystals to be used in the performance of a service. These items are purchased by the jeweler for resale where they are transferred to the customer in a form or quantity capable of a fixed or definite price value and each item is actually sold to the customer as evidenced by a separate charge therefor.

EXAMPLE: A lawn care service applies fertilizer, herbicides, and pesticides to its customers' lawns. The following are examples of invoices to customers which are suitable to indicate a lawn care service's purchase of the fertilizer, herbicides, and pesticides for resale to those customers: "Chemicals...31 Gal...\$60"; "Fertilizer...50 lbs....\$100"; and "Materials applied to lawn...4 bushel...\$40". The following are examples of information placed upon an invoice which would not indicate a purchase for resale to the customers invoiced: "Fifty percent of the charge for this service is for materials placed on a lawn," or "Lawn chemicals...\$30" or "Fifty pounds of fertilizer was applied to this lawn."

18.31(2) *Purchases made by automobile body shops or garages with body shops (effective October 1, 1980).*

Tangible personal property purchased by body shops can be purchased for resale provided both of the following conditions are met:

1. The property purchased for resale is actually transferred to the body shop's customer by becoming an ingredient or component part of the repair work. See Iowa Code section 422.42(2) and *Cedar Valley Leasing Inc. v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979).

2. The property purchased for resale is itemized as a separate item on the invoice to the body shop's customer and is transferred to the customer in a form or quantity capable of a fixed or definite price value.

If either of the above two events is missing, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

When body shops purchase items which will be resold (see list of items in this rule) in the course of the repair activity, the vendors selling to the body shops are encouraged to accept a valid resale certificate at the time of purchase. See rule 701—15.3(422,423). Failure of the vendor to accept a valid resale certificate may subject that vendor to sales tax liability since the burden of proof would be on the vendor that a sale was made for resale. If the vendor cannot meet that burden, the vendor will be liable for the sales tax. Such burden is not met merely by a showing that the purchaser had obtained from the department an Iowa retail sales tax or retail use tax permit.

For insurance purposes, body shops are reimbursed by insurance companies for "materials" which such shops consume in rendering repair services. Some of the materials are transferred to the recipients of the repair services and some are not. Of those so transferred, such transfer is in irregular quantities and is not in a form or quantity capable of a fixed or definite price value. Therefore, body shops are generally deemed to be the consumers of materials and must pay tax on these items at the time of purchase. Nonexclusive examples of items most likely to be included in this category of "materials," whether actually transferred to customers of body shops or not, are as follows:

- Abrasives
- Accessories
- Battery water
- Body filler or putty
- Body lead
- Bolts, nuts and washers
- Brake fluid
- Buffing pads
- Chamois
- Cleaning compounds
- Degreasing compounds

Floor dry
Hydraulic jack oil
Lubricants
Masking tape
Paint
Polishes
Rags
Rivets and cotter pins
Sand paper
Sanding discs
Scuff pads
Sealer and primer
Sheet metal
Solder
Solvents
Spark plug sand
Striping tape
Thinner
Upholstery tacks
Waxes
White sidewall cleaner

The following are nonexclusive examples of parts which can be purchased for resale since they are generally transferred to the body shop's customer during the course of the repair in a form or quantity capable of a fixed or definite price value and are generally itemized separately as parts.

Batteries
Brackets
Bulbs
Bumpers
Cab corners
Chassis parts
Doors
Door guards
Door handles
Engine parts
Fenders
Floor mats
Grills
Headlamps
Hoods
Hub caps
Radiators
Rocker panels
Shock absorbers
Side molding
Spark plugs
Tires
Trim
Trunk lids
Wheels
Window glass
Windshield ribbon
Windshields

The following are nonexclusive examples of tools and supplies which are generally not transferred to the body shop's customer during the course of the repair and therefore could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer and therefore the body shop must pay tax to the vendor at the time of purchase.

- Air compressors and parts
- Body frame straightening equipment
- Brooms and mops
- Buffers
- Chisels
- Drill bit
- Drop cords
- Equipment parts
- Fire extinguisher fluids
- Floor jacks
- Hand soap
- Hand tools
- Office supplies
- Paint brushes
- Paint sprayers
- Sanders
- Spreaders for putty
- Signs
- Washing equipment and parts
- Welding equipment and parts

Because of the nature of their business and the formulas devised by the insurance industry to reimburse body shops for cost of "materials," it is possible for body shops, in their invoices to their customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shops and some of such individual materials are not even transferred by body shops to their customers. Therefore, the body shops are generally the "consumers" of "materials" and do not purchase them for resale. *W. J. Sandberg Co. v. Iowa State Board of Assessments and Review*, 225 Iowa 103, 278 N.W. 643 (1938). Thus, body shops should pay tax to their suppliers on all materials purchased and consumed by them. If materials are purchased from non-Iowa suppliers who do not collect Iowa tax from body shops, such body shops should remit consumer use tax to the Department of Revenue on such materials.

Body shops must collect sales tax on the taxable service of repairing motor vehicles. See rule 701—26.5(422). However, due to the nature of the insurance formulas, it is possible for body shops to itemize that portion of their billing which would be for repair services and that portion relating to consumed "materials." It is also possible for body shops to itemize that portion of their charges for parts which they purchase for resale to their customers. Body shops do not and cannot resell the tools and supplies previously listed in this rule and are taxable on their purchases of such items.

Therefore, as long as body shops separately itemize on their invoices to their customers the amounts for labor, parts, and for "materials," body shops should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE: A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, solder and polishes. In its invoice to the customer, the labor is separately listed at \$300, the part (fender) is separately listed at \$300, and the category of "materials" is separately listed for a lump sum of \$100, for a total billing of \$700. The Iowa sales tax computed by the body shop should be on \$600 which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in

the tax base for “gross taxable services” as defined in Iowa Code subsection 422.42(16), which is taxable in Iowa Code section 422.43.

In this example, if the “materials” were not separately listed on the invoice, but had been included in either or both of the labor or part charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to its supplier at time of purchase.

This rule is intended to implement Iowa Code sections 422.42, 422.43 and 423.2.

701—18.32(422,423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations.

18.32(1) *In general.* The sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, included but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an “account payable” qualifies as consideration as well as the actual exchange of money or its equivalent. Transactions between affiliated corporations may not be subject to tax where it can be shown that the affiliated corporations are operating as a unit within the meaning of Iowa Code sections 422.42(1) and 423.1(8).

18.32(2) *Affiliated corporations acting as a unit.* If an affiliated corporation acts as an agent for the other affiliated corporation in a transaction listed in 18.32(1) such corporation shall be considered as acting as a unit as set forth herein and such transactions may not be subject to tax.

This rule should not be equated with the unitary business concept used in corporation income tax law.

This rule is intended to implement Iowa Code sections 422.42(1) and 423.1(8).

701—18.33(422,423) Printers’ and publishers’ supplies exemption with retroactive effective date.

18.33(1) For the purposes of this rule, a “printer” is any person, a portion of whose business involves the completion of a finished, printed product for sale at retail by that person or another person. A “printer” is also any person, a portion of whose business involves the completion of a finished printed packaging material used to package products for ultimate sale at retail. The term “printer” does not include any person printing or copyrighting printed material for its own use or consumption and not for resale. A “publisher” means and includes any person who owns the right to produce, market, and distribute printed literature and information for ultimate sale at retail.

18.33(2) Effective May 4, 1995, and retroactive to July 1, 1983, the gross receipts from the sale or rental of the following to a printer or publisher are exempt from tax: acetate; antihalation backing; antistatic spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models; modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; pH-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and paste-ups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; Veloxes; wood mounts; and any other items used in a similar

capacity to any of the above-enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies not enumerated in this subrule are subject to tax.

18.33(3) Claim for refunds of tax, interest, or penalty paid for the period of July 1, 1983, to June 30, 1995, must be limited to \$25,000 in the aggregate and will not be allowed unless filed prior to October 1, 1995. If the amount of claimed refunds for this period totals more than \$25,000, the department must prorate the \$25,000 among all claims.

701—18.34(422,423) Automatic data processing.

18.34(1) *In general.*

a. Applicability of tax. For the purposes of this rule, the tax on automatic data processing is applicable to the gross receipts of:

- (1) Sales and rentals of data processing equipment (hardware).
- (2) Sales and rentals of tangible personal property produced or consumed by data processing equipment or prewritten (canned) computer software used in data processing operations.
- (3) Certain enumerated services performed on or connected with data processing such as rental of tangible personal property, machine repair, services of machine operators, office and business machines repair, electrical installation, and any other taxable service enumerated in Iowa Code section 422.43.

b. Definitions.

(1) “*Computer*” means a programmed or programmable machine or device having information processing capabilities and includes word processing equipment, testing equipment, and programmed or programmable microprocessors and any other integrated circuit embedded in manufactured machinery or equipment.

(2) “*Hardware*” means the physical computer assembly and peripherals including, but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, tape readers, document sorters, optical readers and digitizers.

(3) “*Canned software*” is prewritten computer software which is offered for general or repeated sale or rental to customers with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Canned software is tangible personal property. The term also includes programs offered for general or repeated sale or rental which were initially developed as custom software. Evidence of canned software includes the selling or renting of the software more than once. Software may qualify as custom software for the original purchaser or lessor but is canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.

(4) “*Custom software*” is specified, designed, and created by a vendor at the specific request of a customer to meet a particular need and is considered to be a sale of a service rather than a sale of tangible personal property. It includes those services represented by separately stated charges for the modification of existing prewritten software when the modifications are written or prepared exclusively for a customer. Modification to existing prewritten software to meet the customer’s needs is custom computer programming only to the extent of the modification and only to the extent that the actual amount charged for the modification is separately stated. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program.

When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program before modification was previously marketed, the new program will qualify as a custom program if the price of the prewritten program was 50 percent or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program if the charge made to the customer for custom programming services, as evidenced by the records of the seller, was more than 50 percent of the contract price to the customer.

The department will consider the following records in determining the extent of modification to prewritten software when there is not a separate charge for the modification: logbooks, timesheets, dated documents, source codes, specifications of work to be done, design of the system, performance requirements, diagrams of programs, flow diagrams, coding sheets, error printouts, translation printouts, correction notes, and invoices or billing notices to the client.

(5) “*Storage media*” includes hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, or other media used for nonvolatile storage of information readable by a computer.

(6) “*Rental*” includes any lease or license agreement between a vendor and a customer for the customer’s use of hardware or software.

(7) “*Program*” is interchangeable with the term “software” for purposes of this rule.

18.34(2) Taxable sales, rentals and services.

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

b. Rental or leasing of equipment. Where a lease includes a contract by which a lessee secures for a consideration the use of equipment which may or may not be used on the lessee’s premises, the rental or lease payments are subject to tax. See rule 701—26.18 on tangible personal property rental.

c. Canned software. The sale or rental for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software may be transferred to a customer in the form of diskettes, disks, magnetic tape, or other storage media or by listing the program instructions on coding sheets.

(1) Tax applies whether title to the storage media on which the software is recorded, coded, or punched passes to the customer or the software is recorded, coded, or punched on storage media furnished by the customer. A fee for the temporary transfer of possession of canned software for the purpose of direct use to be recorded, coded, or punched by the customer or by the lessor on the customer’s premises, is a sale or rental of canned software and is taxable.

(2) Tax applies to the entire amount charged to the customer for canned software. Where the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees includable in the purchase price are subject to tax.

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

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

f. Materials and supplies. The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated is a sale subject to tax.

Generally service bureaus are consumers of all tangible personal property, including cards and forms, which they use in providing services unless a separate charge is made to customers for the materials, in which case, tax applies to the charge made for the materials.

g. Additional copies. When additional copies of records, reports, tabulation, etc., are sold, tax applies to the charges made for the additional copies. “Additional copies” are all copies in excess of those produced on multipart carbon paper simultaneously with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the service bureau to the customer. If no separate charge is made

for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any) and the cost of materials and labor cost to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. Tax applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting or line drawings, and put on microfilm or photorecording paper.

h. Mailing lists. Addressing (including labels) for mailing. Where the service bureau addresses, through the use of its automatic data processing equipment or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for addressing. Similarly, where the service bureau prepares, through the use of its automatic data processing equipment or otherwise, labels to be affixed to material to be mailed, with names and address furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for producing the labels, regardless of whether the service bureau itself affixes the labels to the material to be mailed. However, tax would be due on any tangible personal property, such as labels, consumed by the service bureau. (See “*f*” above.) Mailing lists in the form of Cheshire tapes, gummed labels, and heat transfers which are attached to envelopes and placed in the mail by a service bureau constitute tangible personal property and are subject to tax.

i. Services of a machine operator. The services of a machine operator, such as a key punch operator or the operator of any other data processing equipment, when hired to operate another person’s machinery or equipment, are subject to tax when contracted for and performed by someone other than an employee of the owner of the machinery and equipment.

j. Maintenance contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive storage media on which prewritten program improvements have been recorded. The maintenance contract may also provide that the purchaser will be entitled to receive certain services, including error corrections and telephone or on-site consultation services.

(1) Nonoptional maintenance contract. If the maintenance contract is required as a condition of the sale or rental of canned software, it will be considered as part of the sale or rental of the canned software, and the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software.

(2) Optional maintenance contracts prior to July 1, 1998. If the maintenance contract is optional to the purchaser of canned software, then only the portion of the contract fee representing improvements delivered on storage media is subject to sales tax if the fee for other services, including consultation services and error corrections, is separately stated. If the fee for other services, including consultation services and error corrections, is not separately stated from the fee for improvements delivered on storage media, the entire charge for the maintenance contract is subject to sales tax.

(3) Optional maintenance contracts on and after July 1, 1998. If an optional software maintenance or support contract provides for technical support services only, then no tax is imposed on the gross receipts from the performance of those services. If an optional software maintenance or support contract separately states the charges which represent improvements delivered on storage media from charges which represent other services, including consultation services and error correction, then only that portion of the contract fee representing improvements delivered on the storage media is subject to sales tax. If an optional software maintenance or support contract provides for the taxable transfer of tangible personal property and the provision of nontaxable services, and there is no separately stated charge for the taxable transfer of property or for the nontaxable service, then state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of such contracts. See 701—paragraph 18.25(3)“*c*” for more information.

18.34(3) Nontaxable items and activities.

a. Custom programs. These are programs prepared to the special order of a customer. Tax does not apply to the transfer of custom programs in the form of written procedures, such as program instructions listed on coding sheets. Tax applies to the sale of material transferred to the customer in the form of typed or printed sheets if separately invoiced.

b. Processing a client's data. Generally speaking, if a person enters into a contract to process a client's data by the use of a computer program, or through an electrical accounting machine programmed by a wired plugboard, the processing of a client's data is nontaxable. Such contracts usually provide that the person will receive the client's source documents, record data in machine readable form, such as in punch cards or on magnetic tape, make necessary corrections, rearrange or create new information as the result of the processing and then provide tabulated listings or record output on other media. This service will be considered nontaxable even if the total charge is broken down into specific charges for each step. The furnishing of computer programs and data by the client for processing under direction and control of the person providing the service is nontaxable even though charges may be based on computer time. The true object of these contracts is considered to be a service, even though some tangible personal property is incidentally transferred to the client. However, tax will apply to tangible personal property separately invoiced to the client.

c. Time sharing. Charges made for the use of automatic data processing equipment, on a time-sharing basis, where access to the equipment is by means of remote facilities, are not subject to tax. Time sharing which is, in fact, a rental of equipment and the lessee exercises the right of possession or control over the equipment is subject to tax. See 18.34(2) "b" and rule 701—26.18(422).

d. Designing of systems, converting of systems, consulting, training, and miscellaneous services. These services consist of the developing of ideas, concepts and designs. Common examples of these nontaxable services are:

(1) Designing and implementing computer systems (e.g., determining equipment and personnel required and how they will be utilized).

(2) Designing storage and data retrieval systems (e.g., determining what data communications and high speed input-output terminals are required).

(3) Converting manual systems to automatic data processing systems, converting present automatic data processing systems to new systems (e.g., changing a second generation system to a third generation system).

(4) Consulting services (e.g., studies of all or part of a data processing system).

(5) Feasibility studies (e.g., studies to determine what benefits would be derived if procedures were automated).

(6) Evaluation of bids (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial).

(7) Providing technical help such as analysts and programmers, usually on an hourly basis.

(8) Writing (coding) and testing of programs—contract programming. These services result in the production of customized programs. This type of service is not taxable because programming requires the development or ascertainment of information, and the evaluation of data, in addition to other development skills.

Persons engaged in providing nontaxable computer services are the consumers of all tangible personal property used in such activities, and the tax must be paid on their acquisition of such property.

This paragraph, 18.34(3) "d," shall become effective for periods beginning on or after April 1, 1992.

e. Installation charges. Where installation charges are separately contracted for or where no contract exists, are separately invoiced, or do not constitute enumerated taxable services, they are exempt from tax. See rule 701—15.14(422,423).

f. Pickup and delivery charges. The tax will not apply to pickup and delivery charges which are separately contracted for or where no contract exists, are separately invoiced.

g. Rental of computer programs. Prior to July 1, 1984, the rental of computer programs was not subject to tax since the program did not constitute equipment. *KTVO, Inc. vs. Bair*, 1977, Iowa 225 N.W.2d, 111. For the rule regarding prewritten (canned) programs subsequent to that date, see 18.3(2) "c."

This rule is intended to implement Iowa Code sections 422.42, 422.45 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

701—18.35(422,423) Drainage tile. The sale or installation of drainage tile which is to be used in disease control, weed control, or the health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. Drainage tile, when purchased for these purposes, is therefore not subject to tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code subsection 422.42(9).

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(9), and 423.2.

701—18.36(422,423) True leases and purchases of tangible personal property by lessors.

18.36(1) True leases and purchases by lessors prior to, on, and subsequent to July 1, 1978. The definition of a sale specified in Iowa Code subsection 422.42(2) does not include leases. Hence, the exemption from tax on sales for resale is inapplicable to the purchase of tangible personal property for the purpose of leasing such property to others, but not for the purpose of reselling such property. *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979). However, even though the general rule is that the acquisition cost of tangible personal property purchased for the purpose of leasing it to others is subject to the Iowa sales or use tax, certain transactions are exempted from tax by statute. See subrule 18.36(4).

18.36(2) General. Prior to July 1, 1984, tax is due on the lease or rental payments derived from the service of equipment rental only and not from the lease or rental of other tangible personal property. See 701—subrule 26.18(1). Tax would also be due on the gross receipts received on the disposal of the tangible personal property provided no exemption exists. When property is purchased for the purpose of financing under a conditional sales contract, the property is purchased for resale, and the acquisition of the property is not subject to Iowa tax. See rule 701—16.47(422,423).

The gross receipts from the leasing of property for subletting purposes is exempt from tax as a resale of a service, but the lessee must collect tax on the gross receipts from subletting unless such subletting is otherwise exempt from tax.

a. Where a resident or nonresident lessor leases equipment to a resident or nonresident lessee and the lease contract is executed in Iowa and the equipment is delivered to the lessee in Iowa, the rental payments are subject to Iowa sales tax, even if the equipment is taken by the lessee to another state. *Williams Rentals, Inc. v. Tidwell*, 516 S.W.2d 614 (Tenn. 1974).

b. Where a nonresident lessor leases equipment to a resident or nonresident lessee and the lessee uses the equipment in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments, provided the lessor maintains a place of business in Iowa as provided in Iowa Code sections 423.1(6) and 423.9. Whether the lease agreement is executed in Iowa or not is irrelevant. *State Tax Commission v. General Trading Co.*, 322 U.S. 335, 64 S.Ct. 1028, 88 L.Ed 1309, (1944).

c. Where a lessee is the recipient of equipment rental services as defined in “*a*” and “*b*” above and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the department of revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee is the recipient of equipment rental services, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to Iowa Code section 423.10, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside of Iowa, and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa and uses it in Iowa, Iowa use tax applies to rental payments, but see “*g*” below.

e. Where a resident or nonresident lessor purchases tangible personal property in Iowa for subsequent lease in or out of Iowa and takes delivery of the equipment in Iowa, the lessor’s purchase is subject to Iowa sales tax. *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968).

f. When a resident or nonresident lessor purchases tangible personal property outside of Iowa for the purpose of leasing it in Iowa and the equipment is brought into Iowa and used by the resident or nonresident lessee in this state, the lessor is considered as having a “use” of the property in Iowa and Iowa use tax will apply to the lessor’s purchase price of the property, regardless whether or not the lessor

makes any physical use of the property in Iowa. *Union Oil Company of California v. State Board of Equalization*, 1963, 34 Cal. Rpts. 872, 386 P.2d 496.

g. If a sales or use tax has already been paid to another state on the purchase price of equipment prior to the use of that equipment in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if a sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given. *Henneford v. Silas Mason Co.*, 1937, U.S.577, 57 S.Ct. 524, 51 L.Ed. 814.

18.36(3) *Leases relating to vehicles subject to registration.*

a. Vehicles as defined in Iowa Code subsections 321.1(4), (6), (8), (9), and (10) (motor trucks, truck tractors, road tractors, trailers, and semitrailers), except when designed primarily for carrying persons, can be purchased free of use tax when purchased for lease and actually leased for use outside Iowa if the subsequent sole use in Iowa is in interstate commerce or interstate transportation.

b. Tangible personal property which by means of fabrication, compounding, or manufacturing becomes an integral part of vehicles as defined in 18.36(3)“a” when manufactured for lease and actually leased to a lessee for use outside the state of Iowa, can be purchased free of use tax provided the sole subsequent use of the vehicle in Iowa is in interstate commerce or interstate transportation. (Iowa purchases which would be subject to Iowa sales tax do not qualify for this exemption.) See rule 701—33.7(423).

The provisions of “a” and “b” are effective for periods beginning on January 1, 1973. Also see 701—Chapter 34 of the rules relating to vehicles subject to registration.

18.36(4) *Special rules for lessors on or after July 1, 1978.* If tangible personal property is purchased for leasing, the purchase of the property is exempt from tax if the following conditions are met:

a. The person (lessor) purchasing the property is regularly engaged in the business of leasing,

b. The period of the lease is for more than one year for sales or property occurring from July 1, 1978, to May 18, 1997, inclusive; for sales of property occurring on and after May 19, 1997, the period of the lease must be for more than five months, and

c. The lease or rental receipts must be subject to tax under the service of equipment rental.

All three conditions must be met before the exemption applies.

If the exemption is properly claimed, it is lost when the property is made use of for any purpose other than leasing and the person claiming the exemption is liable for the tax based on the original purchase price. Tax paid on the leasing or rental payments would be allowed as a credit against the tax due on the purchase price.

In the following examples, assume, unless stated to the contrary, that the lease or rental receipts are subject to tax. The examples are written on the assumption that the period for an exempt lease is five months or longer. Thus, these examples are basically applicable to the period beginning May 19, 1997; however, the examples illustrate principles which are applicable to the purchase for lease exemption for periods longer than one year which was the requirements for exemption prior to May 19, 1997.

EXAMPLE: A restaurant makes a one-time purchase of office furniture which it leases to an insurance company for a period of four years. The purchase of office furniture by the restaurant would be subject to tax because the restaurant is not regularly engaged in the business of leasing. However, if the restaurant established a pattern of regularly purchasing office furniture or other tangible personal property for lease, the exemption would apply.

EXAMPLE: A company purchases a computer which will be leased for a period of three years, at which time the computer is returned to the company. The sole business of the company is to purchase this one computer for lease. The purchase of the computer is exempt from tax because the company is regularly engaged in the business of leasing.

EXAMPLE: A leasing company purchases three lawn mowers which will be leased to individuals for periods of time less than five months. The purchase of the lawn mowers by the leasing company would be subject to tax because the periods of the leases are for less than five months.

EXAMPLE: A leasing company purchases a computer which will be leased for a period of three years. The purchase of the computer is exempt from tax because the period of the lease is for more than five months.

EXAMPLE: A leasing company buys a computer. The company claims the exemption from tax, but the company uses the computer in its own operations. Tax is due on the original purchase price and the leasing company is liable for the tax due.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After four months, the machine is returned to the leasing company and then the machine is immediately re-leased without being used by the leasing company for any other purpose. The exemption would apply because it was properly claimed and nothing occurred to cause loss of the exemption.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After four months, the machine is returned and the leasing company then uses the machine in its own business. The exemption would no longer apply and the leasing company would be liable for the tax based on the original purchase price. Credit would be allowed against the tax due on the purchase price for any tax paid on the lease or rental payments. Assume the leasing company paid \$2,000 for the copying machine and charged \$200 per month plus \$10 in tax per month. Since the machine is returned and the exemption is not applicable, the leasing company would owe \$100 on the \$2,000 acquisition cost. However, the leasing company collected \$40 (four months x \$10) tax on the monthly rental charges. Allowing the credit for tax collected of \$40 against the total tax liability of \$100 leaves a net tax liability of \$60 owed by the leasing company.

EXAMPLE: A manufacturer and seller of office furniture also leases office furniture. The leases always run for a period longer than five months and the company usually has only two leases per year. The leasing operation only accounts for 1 percent of the company's total business. The company still qualifies for the exemption because it is regularly engaged in the business of leasing and the period of the lease is for more than five months.

EXAMPLE: A leasing company purchases an airplane from an aircraft dealer and leases it for a period of three years. The lease or rental payments are not taxed because of the exemption for transportation services. The leasing company would owe tax based on the acquisition cost because the lease or rental payments are not subject to tax under the service of equipment rental.

EXAMPLE: A leasing company purchases equipment and leases it to a lessee for a period of 18 months. For the first 3 months, the equipment is used by the lessee in making repairs to existing structures and the lease receipts are taxable. For the remainder of the lease period, the equipment is used in new construction of buildings and structures and the lease receipts are exempt from tax. The acquisition cost of the equipment is exempt because the exemption was properly claimed and was not subsequently lost by a use other than leasing.

EXAMPLE: A leasing company purchases from an Iowa retailer equipment on May 18, 1997, for the purpose of leasing it for a period of six months. The lease receipts will be taxable. The sales tax exemption on the acquisition cost to the lessor cannot be claimed because the sale occurred before May 19, 1997, and, at the time of the sale, no sales tax exemption applied to such acquisition cost. The exemption for acquisition cost should not be given a retroactive effect. *Jones v. Gordy*, 1935, 169 Md. 173, 180 Atl. 272.

EXAMPLE: A leasing company purchases equipment outside of Iowa on May 1, 1997. The lessee brings the equipment into Iowa on June 1, 1997, and uses it in Iowa. The lease period is nine months, and the lessee's use in Iowa is subject to Iowa use tax on the lease payments. Under these circumstances, the Iowa use tax exemption on the lessor's acquisition cost applies because it is the law in effect at the time of use in Iowa, not at the time of sale, which determines whether a use tax exemption applies. *City of Ames v. Iowa State Tax Commission*, 1955, 246 Iowa 1016, 71 N.W.2d 15; *Allis-Chalmers Mfg. Co. v. Iowa State Tax Commission*, 1958, 250 Iowa 193, 92 N.W.2d 129.

EXAMPLE: A leasing company purchases equipment not for resale and leases it to the lessee for a period of more than five months. After three months, the equipment is returned to the leasing company which then sells the equipment. Such sale is not part of the regular course of the leasing company's business. The exemption, though properly claimed, is lost because, by reason of such sale, the leasing

company made use of the property for a purpose other than leasing or renting. Had the equipment been returned to the leasing company on or after five months and one day from the commencement of the lease period, and the leasing company then sold the equipment outside the regular course of its business or used the equipment in its business, the exemption for acquisition cost would not be lost. Had the equipment been purchased for resale and leased prior to such resale, the acquisition cost to the leasing company would be exempt from tax. *Herman M. Brown Co. v. Johnson*, 1957, 248 Iowa 1143, 82 N.W.2d 134. If the equipment is traded in toward the purchase price of other equipment by the leasing company, or if the leasing company disposes of the equipment after it is fully depreciated, the exemption for acquisition cost is not lost. Where sale of equipment outside the regular course of business is made by the leasing company, see also rule 18.28(422) to determine whether the casual sale exemption applies to the receipts from such sale.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee. Assume that the exemption for acquisition cost of the equipment was properly claimed. Thereafter, the lessee makes an assignment of the lease. The exemption is not lost since the assignee stands in the same position as the original lessee and such an assignment does not change the nature of the original lease period. *Berg v. Ridgway*, 1966, 258 Iowa 640, 140 N.W.2d 95.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. The leasing company sells the lease contracts, as commercial paper, to others. The exemption for acquisition cost can still be claimed and such sales of lease contracts do not cause loss of the exemption.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lease can no longer be performed because the property is destroyed by an act of God. The acquisition cost exemption is not lost.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lessee is adjudged bankrupt and the equipment is returned to the leasing company and is re-leased without being used by the leasing company for any other purpose. The acquisition cost exemption is not lost since the leasing company makes no use for any purpose other than leasing or renting.

EXAMPLE: A leasing company purchases equipment which is leased to a lessee. The criteria for the acquisition cost exemption are present. The lessee then sublets the equipment to another for a period less than five months. The acquisition cost exemption is not lost.

18.36(5) *Lease or rental of all tangible personal property now subject to tax.* On and after July 1, 1984, the lease or rental of all tangible personal property is subject to tax. See rule 701—26.18(422) for information concerning additional transactions subject to tax after that effective date.

This rule is intended to implement Iowa Code sections 422.42(2), 422.43, 422.45, 423.1, and 423.4.

701—18.37(422,423) Motor fuel, special fuel, aviation fuels and gasoline.

18.37(1) *In general.* The gross receipts from the sale of motor fuel and special fuel are exempt from sales tax under Iowa Code section 422.45(11) if (1) the fuel is consumed for highway use, in watercraft, or in aircraft, (2) the Iowa fuel tax has been imposed and paid, and (3) no refund or credit of fuel tax has been made or will be allowed. However, beginning July 1, 1985, the gross receipts from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa are exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat. Prior to July 1, 1988, retail sales of aviation gasoline were not exempt from sales tax under Iowa Code subsection 422.45(11). See subrule 18.37(4).

18.37(2) *Refunds or credits of motor fuel and special fuel.* Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax paid and used for purposes other than to propel a motor vehicle or used in watercraft.

18.37(3) *Refunds of tax on fuel purchased in Iowa and consumed out of Iowa.* Even though fuel is purchased in Iowa, fuel tax paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of

the fuel tax does not subject the purchase of the fuel to sales tax. Subjecting the purchase to sales tax has the effect of imposing sales tax when fuel is consumed in interstate commerce while fuel consumed on Iowa highways in intrastate commerce is exempt from sales tax pursuant to Iowa Code subsection 422.45(11). The effect for sales tax purposes is to impose a greater tax burden on non-Iowa highway fuel consumption than Iowa highway fuel consumption thereby discriminating against interstate commerce. In addition, the effect of imposing sales tax on interstate excess purchases where intrastate highway use is not subject to the tax constitutes an export duty for purchasing fuel in Iowa and exporting it for use in another state. Such effects are in violation of the commerce clause of the United States Constitution. *Boston Stock Exchange v. State Tax Commission*, 1977, 429 U.S. 319, 97 S.Ct. 599, 50 L.Ed.2d 514 and *Coe v. Errol*, 1886, 116 U.S. 517, 6 S.Ct. 475, 29 L.Ed. 715.

18.37(4) Aviation gasoline. Tax treatment prior to July 1, 1988. Prior to July 1, 1988, all Iowa fuel tax paid on aviation gasoline used in aircraft was refundable under Iowa Code section 452A.17. Generally, aviation gasoline is not purchased for highway use or for use in watercraft, therefore, the exemption from sales and use tax found in Iowa Code subsection 422.45(11) was generally not applicable to purchases of aviation gasoline. However, Iowa Code subsection 422.52(4) provides for the collection of sales tax by way of deduction from motor fuel tax refunds allowable under Iowa Code chapter 452A. Therefore, sales tax is not assessed at the retail level but only in instances where the fuel tax paid on aviation gasoline has been refunded. If no application for a fuel tax refund relating to aviation fuel has been made, no sales tax is assessed on the aviation gasoline purchase.

18.37(5) Ethanol. For tax periods after April 30, 1981. Retail sales of ethanol are exempt from Iowa sales or use tax.

18.37(6) Tax base. The basis for computing the Iowa sales tax will be the retail selling price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the selling price in determining the proper sales tax due. *W.M. Gurley v. Army Rhoden* supra. Also see rule 701—15.12(422,423).

This rule is intended to implement Iowa Code sections 422.31, 422.43, 422.45(11), 422.45(22), 422.52(4), 423.1, 452A.3, and 452A.17.

701—18.38(422,423) Urban transit systems. A privately owned urban transit system which is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases which are within the urban transit systems charter.

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

Whether an urban transit company will be considered an instrumentality of federal, state or county government for the purpose of receiving sales tax exemption on its fuel purchases, which are also exempted from fuel tax and used for public purposes, depends upon consideration of the following:

1. Whether it is created by government.
2. Whether it is wholly owned by government.
3. Whether it is operated for profit.
4. Whether it is primarily engaged in the performance of some essential governmental function.
5. Whether the payment of tax will impose an economic burden upon the corporation, or that payment of tax serves to materially impair the usefulness or efficiency of the corporation or the payment of tax materially restricts the corporation in the performance of its duties.

These above enumerated considerations are not all inclusive and the presence of some and absence of others does not necessarily establish the exemption. *Unemployment compensation of North Carolina v. Wachovia Bank and Trust Company*, 2 S.E.2d 592, 595, 215 No. Car. 491 (1939); 1976 O.A.G. 823, 827, 828.

This rule is intended to implement Iowa Code subsection 422.45(1).

701—18.39(422,423) Sales or services rendered, furnished, or performed by a county or city. The gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, and communication

service rendered, furnished, or performed by a county or city are subject to the tax. On and after July 1, 1985, the gross receipts from fees paid to cities and counties for the privilege of participating in any athletic sports are also subject to tax. On or after July 1, 1991, the gross receipts from any municipally owned pay television service are taxable as well. On and after April 1, 1992, the gross receipts from a county or municipality furnishing sewage service or solid waste collection and disposal service to nonresidential commercial operations are taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information).

Any other sales or services rendered, furnished, or performed by a county or city are not subject to the tax.

A “sport” is any activity or experience which involves some movement of the human body and gives enjoyment or recreation. An “athletic” sport is any sport which requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic sports: baseball, football, basketball, softball, volleyball, golf, tennis, racquetball, swimming, wrestling, and foot racing.

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

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

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

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

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

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

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

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

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

5. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code sections 422.43 and 422.45.

701—18.40(422,423) Renting of rooms. The gross receipts from the renting of any and all rooms, including but not limited to sleeping rooms, banquet rooms or conference rooms in any hotel, motel,

inn, public lodging house, rooming or tourist court, or in any place where sleeping accommodations are furnished to transient guests, whether with or without meals, are subject to the tax. The rental of a mobile home or of manufactured housing which is tangible personal property is treated as room rental rather than tangible personal property rental. The renting of all rooms would be exempt from the tax if rented by the same person for a period of more than 31 consecutive days. The renter must contract to rent for a single period of 31 days or more. The renter may not accumulate these 31 days by contracting for two or more rental transactions. The incremental manner in which the hotel, motel, inn, public lodging house, rooming or tourist court, or any place where sleeping accommodations are furnished to transient guests bills its customers does not influence the accumulation of days that is required to claim the exemption.

This rule is intended to implement Iowa Code section 422.43.

701—18.41(422,423) Envelopes for advertising.

18.41(1) Some envelopes which contain advertising are exempt from tax. Envelopes which are not primarily used for advertising are taxable. The primary use of the envelopes should control whether they will be taxable or exempt. *Iowa Movers and Warehouseman's Assn. v. Briggs*, 237 N.W.2d 759 (Iowa 1976).

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

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

18.41(2) Because of the difficulty of administering this exemption, purchasers of envelopes may petition to the department for permission to use a formula to represent to the seller the portion of taxable and exempt gross receipts from envelope purchases.

This rule is intended to implement Iowa Code subsection 422.45(9).

701—18.42(422,423) Newspapers, free newspapers and shoppers' guides.

18.42(1) General observations. The gross receipts from the sales of newspapers, free newspapers, and shoppers' guides are exempt from tax. The gross receipts from the sales of magazines, newsletters, and other periodicals which are not newspapers are taxable. Recent cases decided by the United States Supreme Court and the Supreme Court of Iowa prohibit exempting from taxation the sale of any periodical if that exemption from taxation is based solely upon the contents of that periodical. See *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987) and *Hearst v. Iowa Department of Revenue & Finance*, 461 N.W.2d 295 (Iowa 1990).

18.42(2) General characteristics of a newspaper. "Newspaper" is a term with a common definition. A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material. Other frequent characteristics of newspapers are the following:

a. Newspapers usually contain photographs. The photographs are more often in black and white rather than color.

b. Information printed on newspapers is usually contained in columns on the newspaper pages.

c. The larger the cross section of the population which reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a "newspaper."

18.42(3) Characteristics of newspaper publishing companies. Companies in the business of publishing newspapers are differently structured from other companies. Often, companies publishing larger newspapers will subscribe to various syndicates or "wire services." A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle

editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

18.42(4) Characteristics which distinguish a newsletter from a newspaper. A “newsletter” is generally distributed to members or employees of a single organization and not usually to a large cross section of the general public. It is often published at irregular intervals by a volunteer, rather than the paid individual who usually publishes a newspaper. A newsletter is often printed on sheets which are held together at one point only by a staple, rather than folded together.

This rule is intended to implement Iowa Code section 422.45(9).

701—18.43(422,423) Written contract. On and after July 1, 1985, the gross receipts from certain additional services are subject to tax. However, these newly taxable services are exempt from tax if performed pursuant to a written services contract in effect on April 1, 1985. The exemption from taxation for these services expires June 30, 1986. The services to which this “written contract” exemption is applicable are the following: cable television; campgrounds; gun repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; lobbying service; pet grooming; reflexology; security and detective services; tanning beds or salons; water conditioning and softening; the rental of recreational vehicles, recreational boats or motor vehicles subject to registration which are registered for a gross weight of 13 tons or less; and fees paid to cities and counties for the privilege of participating in any athletic sports.

A “written contract” is one which is entirely in writing, so that all of its essential terms and provisions exist in writing, and oral statements are not necessary to set out any essential term or provision, such as who the parties to the contract are or what their rights and duties are under the contract. However, if it is necessary to resort to oral statements to explain the meaning of a written provision in a contract, a “written contract” can still exist. A written contract need not consist of one document or instrument only. It can consist of two or more writings, if all the necessary provisions of the contract are contained in those writings. For the purposes of this rule, the following must be stated in writing if a written contract is to exist: The nature and specification of the service to be provided, the name of the party providing the service, the name of the party receiving the service, the “consideration” (amount and method of payment) for providing the service, the signature of one or both of the parties to the contract, depending upon circumstances, and the date upon which the contract became effective.

The written contract must be in effect on April 1, 1985, if the service to which the contract pertains is to be exempt from tax. If a contract is signed by only one of the parties to it, that contract is still a “written contract” if the party which has not signed the contract acquiesces in the promises which the party who has signed the document makes within it. *McDermott v. Mahoney*, 139 Iowa 292, 115 N.W. 32, (Iowa 1908).

EXAMPLE: A security agency sends a proposed agreement to a potential customer promising to provide the services of a uniformed security guard for the customer’s business premises beginning March 15, 1985, and continuing until March 15, 1987. The agreement is signed by the security agency’s president and dated February 15, 1985. The agreement is received by the potential customer’s president, who does not sign it, but, on March 15, 1985, allows the security agency’s uniformed guard on the premises, and makes payment for those services as stipulated in the agreement. This agreement is a “written contract”; the services of the uniformed guard are not subject to tax for the period beginning July 1, 1985, and ending June 30, 1986. The services performed between July 1, 1986, and March 15, 1987, would be subject to tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—18.44(422,423) Sale or rental of farm machinery and equipment. On and after July 1, 1987, the gross receipts from the sale or rental of farm machinery and equipment will be exempt from tax. Effective July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case or other similar article or receptacle sold for use in agricultural, livestock or dairy production are not subject to sales tax.

18.44(1) Characteristics of and limitations upon farm machinery and equipment. To be eligible for exemption from or refund of tax under this rule the machinery or equipment must:

- a. Be directly and primarily used in production of agricultural products; and
- b. Be one of the following:
 - (1) A self-propelled implement; or
 - (2) An implement customarily drawn or attached to a self-propelled implement; or
 - (3) A grain dryer; or
 - (4) An auxiliary attachment which improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer if sale or first use in Iowa is on or after July 1, 1995; or
 - (5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).
 - (6) Effective July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock or dairy production.
- c. No vehicle subject to registration, as defined in Iowa Code subsection 423.1(7), implement customarily drawn or attached to a vehicle, auxiliary attachment, or any replacement part for a vehicle, implement, or auxiliary attachment is eligible for the exemption or refund allowed under this rule.

18.44(2) Definitions and characterizations. For the purposes of this rule, the following definitions apply.

a. Production of agricultural products means the same as the term “agricultural production” which is defined in 701—subrule 17.9(3), paragraph “a,” to mean a farming operation undertaken for profit by raising crops or livestock. Production of agricultural products begins with the cultivation of land previously cleared for planting of crops or with the purchase or breeding of livestock or domesticated fowl. Not included within the meaning of the phrase are the clearing or preparation of previously uncultivated land, the creation of farm ponds or the erection of machine sheds, confinement facilities, storage bins or other farm buildings. See *Trullinger v. Fremont County*, 223 Iowa 677, 273 N.W. 124 (1937). Machinery and equipment used for these purposes would be used for activities which are preparatory to but not a part of the production of agricultural products. The production of agricultural products ceases when an agricultural product has been transported to the point where it will be sold by the farmer or processed.

EXAMPLE. Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later the same tractor and wagon are used to deliver the corn from the farm to the local elevator where it is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products and the refund or exemption would apply. The elevator has not used its tractor and wagon in such production; refund or exemption would not be lawful.

b. Farm machinery and equipment means machinery and equipment specifically designed for use in the production of agricultural products or equipment and machinery not specifically designed for this use but which are directly and primarily used in the production of agricultural products.

EXAMPLE. Farmer Jones raises livestock and the farming operation requires that fences be built to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to construct the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but would be directly and primarily used in the production of agricultural products. Therefore, the exemption or refund applies.

c. Self-propelled implement has the same meaning as in 701—subrule 17.9(5), paragraph “c,” where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

d. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: Augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

e. Direct use in agricultural production. In determining whether farm machinery, equipment or any grain dryer is directly used in agricultural production, the fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment coming into actual physical contact with the soil or crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

f. Grain dryer. The term grain dryer includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

g. Replacement parts, differing meanings of the term for the period ending June 30, 1988, and for the period beginning July 1, 1988.

(1) For the period beginning July 1, 1985, and ending June 30, 1988, a replacement part is refundable or exempt only if its cost is depreciable for state and federal income tax purposes. Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of machinery or equipment or appreciably prolong its life. Replacement parts which only keep the machinery or equipment in its ordinarily efficient operating condition are not eligible for exemption or refund. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for refund or exemption from tax. However, the person claiming the refund or exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

(2) On and after July 1, 1988, the sale or lease of a replacement part is exempt from tax if the replacement part is essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products. The term "replacement part" does not include attachments and accessories which are not essential to the operation of the farm machinery or equipment. Nonexclusive examples of attachments or accessories are: cigarette lighters, radios, and add-on air-conditioning units.

18.44(3) *Taxable and nontaxable transactions.* The following are nonexclusive examples of sales and leases of farm machinery and equipment which are or are not subject to exemption and refund.

a. A lessor's purchase of farm machinery and equipment is not subject to tax, or is taxable subject to refund, if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee's use of the machinery or equipment is otherwise exempt or subject to refund. To claim exemption from tax or a refund of tax paid, the lessor need not make exempt use of the machinery or equipment so long as the lessee does.

b. To claim refund or exemption, the owner or lessee of farm machinery or equipment need not be a farmer so long as the machinery and equipment is directly and primarily used in the production of agricultural products, and the owner or lessee and the equipment or machinery meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and so used after purchase is entitled to the benefits of this rule even though that person is not the owner or occupant of the land where the airplane is used.

c. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for refund or exemption if those transactions are otherwise qualified under this rule.

18.44(4) Auxiliary attachments. The following is a list (not inclusive) of auxiliary attachments described in 18.44(1)“b”(4), the sale or first use in Iowa which is exempt from tax on and after July 1, 1995: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upperbeaters, silage bags, and weights.

18.44(5) and 18.44(6) Rescinded IAB 9/7/88, effective 10/12/88.

This rule is intended to implement Iowa Code subsections 422.43(3) and 422.45(26), Iowa Code chapter 422, Division IV, and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997. The sale or rental of computers, industrial machinery and equipment, including pollution control equipment, used in manufacturing, in research and development, or in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise is, under certain circumstances, exempt from tax and, under other circumstances, is subject to refund of sales or use tax paid. The sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products is also exempt from tax; see subrule 18.45(8). For purposes of the organization of this rule, items that may be exempt or subject to refund of tax are referred to as specified property unless the context of the rule indicates otherwise. See subrule 18.45(1) for definition of what constitutes specified property. See rule 18.58(422,423) for the manner in which the sale or rental of machinery, equipment, and computers to manufacturers and the sale or rental of computers to commercial enterprises are treated on and after July 1, 1997.

18.45(1) Definitions. The following words are defined for the purposes of this rule in the manner set out below.

“*Commercial enterprise*” includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a “commercial enterprise.” The term “professions” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term “occupations” means the principal business of an individual. Included within the meaning of “occupations” is the business of farming. A professional corporation which carries on any business which is a “profession” or “occupation” is not a commercial enterprise.

“*Computer*” means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are: terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of “computer” is point-of-sale equipment. For a characterization of “point-of-sale equipment” see 701—subrule 71.1(7).

Also included within the meaning of the word “computer” is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedures of a computer. An operating system or executive program is exempt from sales tax only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 18.34(422,423). Excluded from the meaning of the word “computer” is any software consisting of an application program. For purposes of this subrule, “operating system or executive program” means a computer program which is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of

all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software which is a collection of one or more programs used to develop and implement the specific applications which the computer is to perform, and which calls upon the services of the operating system or executive program.

"Directly used." Property is "directly used" only if it is used to initiate, sustain, or terminate the transformation of any activity. In determining whether any property is "directly used," consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

"Financial institution" is a bank incorporated under Iowa Code chapter 524 or federal law; a savings and loan association incorporated under Iowa Code chapter 534 or federal law; a credit union organized under Iowa Code chapter 533 or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

"Industrial machinery and equipment" means machinery and equipment used by a manufacturer in a manufacturing establishment. Machinery is any mechanical, electrical or electronic device designed and used to perform some function and to produce a certain effect or result. The word includes not only the basic unit of the machinery but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The word also includes all devices used or required to control, regulate or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be "machinery." See *Deere Manufacturing Co. v. Zeiner*, 247 Iowa 1264 78 N.W.2d 527 (1956). Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are: tables on which property is assembled on an assembly line and chairs used by assembly line workers.

"Insurance company" means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 519, or 520 or authorized to do business in Iowa as an insurer. An insurance company must have 50 or more persons employed in Iowa, excluding licensed insurance agents. Effective April 8, 1996, an insurance company means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or authorized to do business in this state as an insurer or licensed insurance agent under Iowa Code chapter 522. Excluded from the definition of "insurance company" are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

"Manufacturer" means any person, firm, or corporation who purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; quarrying; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; mining; and the activities of restaurateurs, hospitals, and medical doctors are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County*, 332 N.W.2d 116 (Iowa Ct. App. 1982).

“Pollution control equipment” means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling or eliminating air or water pollution. The term does not include any apparatus used to eliminate “noise pollution.” Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.”

“Processing” means an operation or series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. See rule 18.29(422,423).

“Processing or storage of data or information.” Not only a computer, but machinery or equipment may be used in the processing or storage of data or information. All computers store and process information. However, only if the “final output” for a user or consumer is stored or processed data will the computer be subject to refund or exemption of tax.

“Recycling” means any process by which waste, or materials which would otherwise become waste, are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. “Recycling” does not include any form of energy recovery.

“Replacement parts.” Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives. Replacement parts which only keep machinery, equipment, or computers in their ordinarily efficient operating condition are not eligible for exemption. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for exemption from tax. However, the person claiming the exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

“Research and development” means experimental or laboratory activity which has as its ultimate goal the development of new products, processes of manufacturing, refining, purifying, combining of different materials, or meat packing. The ultimate goal of research and development must be that of adding value to products. The term “research and development” does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical, or similar projects. Machinery, equipment, and computers are used “directly” in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

“Specified property” means property that is a computer or industrial machinery and equipment including pollution control equipment and depreciable replacement parts for that property.

18.45(2) Requirements. The sale or rental of specified property is exempt from tax if:

a. The property is real property within the scope of Iowa Code section 427A.1(1) “e” or “j.” For sales occurring after January 1, 1994, the property is not required to be subject to taxation as real property (however, see subrules 18.45(4) and 18.45(8)); and

b. The property is directly and primarily used in one of the following:

1. By a manufacturer in processing tangible personal property; or

2. In research and development of new products or processes of manufacturing, refining, purifying, combining of different materials or packing of meats to be used for the purposes of adding value to products; or

3. In processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

c. To qualify for refund or exemption, a computer may be taxable as either commercial or industrial real estate. Machinery and equipment must be taxable as industrial real estate only to be similarly qualified. Research and development machinery and equipment that is not taxable as industrial real estate does not qualify for refund or exemption. See 701—subrules 71.1(5) and 71.1(6) for characterizations of “commercial” and “industrial” real estate. However, see subrule 18.45(4) for an exception to the requirement that certain property be taxable as real property.

d. The following are examples of machinery which is not directly used in manufacturing:

1. Machinery used exclusively for the efficient use of other machinery. Examples are: air cooling, air conditioning, and exhaust systems.
2. Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained or repaired.
3. Machinery used by administrative, accounting, and personnel departments.
4. Machinery used by plant security, fire prevention, first aid, and hospital stations.
5. Machinery used in plant cleaning, disposal of scrap and waste, plant communications, lighting, safety, or heating.

e. The following is an example of property directly used in research and development: Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory: a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a “steam cleaner” for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director’s secretary. The computer and the microscope are “directly” used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

f. The following is an example of property used in processing or storage of information or data: A health insurance company has three computers. Computer A is used to monitor the temperature within the insurance company’s building. The computer transmits messages to the building’s heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefit paid out for various classes of insured. The “final output” of Computer A is neither stored nor processed information. The final output of Computer B is stored information. The final output of Computer C is processed information. The sale, lease, or use of Computers B and C would qualify for exemption or refund.

g. The following is an example of property not used in manufacturing: A manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns and the metal press machine is used for no other purpose than to fabricate the patterns. The metal press machine is not used in manufacturing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

18.45(3) Exceptions. The following specified property is not exempt:

a. Property assessed by the department of revenue pursuant to Iowa Code chapters 428, 433, 434 and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to as well as owned by the company is assessed by the department. See 701—Chapters 71 and 77.

b. Hand tools.

c. Point-of-sale equipment. See 701—subrule 71.1(7).

18.45(4) Inclusions. Property exempt from taxation for property tax purposes under the provisions of Iowa Code chapters 404 and 427B relating to urban revitalization property and industrial machinery receiving partial exemption by ordinance is also eligible for exemption from sales and use taxes even though the property is not subject to taxation as real property. Urban revitalization property and industrial machinery receiving partial exemption by ordinance are discussed in rules 701—80.8(404) and 80.6(427B), respectively. This property must meet the other requirements in subrule 18.45(2) in order to be exempt from sales and use taxes.

18.45(5) Lessor purchases of specified property. The analysis contained in rule 18.44(422, 423) regarding lessor purchases of farm machinery and equipment is applicable to explain that same problem regarding specified property. See subrule 18.44(3) for analysis.

18.45(6) Rights of refund and exemption. Rescinded IAB 10/13/93, effective 11/17/93.

18.45(7) *Designing or installing new industrial machinery or equipment.* On and after July 1, 1985, the gross receipts from the services of designing or installing new industrial machinery or equipment shall be exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to refund or exemption under this rule. In addition, the machinery or equipment must be “new.” For purposes of this subrule, “new” means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A “computer” is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

18.45(8) *Property used in recycling or reprocessing of waste products.* On and after July 1, 1989, the gross receipts from the sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products shall be exempt from tax. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an endloader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. See 18.45(8) “c.” The sale of a bin for storage ordinarily would not be exempt from tax, storage without more not being a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing.

For example, machinery, equipment or a computer need not meet the requirements of 18.45(2) “a” concerning specified property being real property for the exemption to apply. Furthermore, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. For instance, a person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

a. By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

b. Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.45(1) for the definition of “directly used” which is applicable to this subrule. The examples of machinery not directly used in manufacturing set out in 18.45(2) “d” should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.45(2) “d”⁴) is not machinery directly used in recycling or reprocessing.

c. Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an “integral part” of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of “processing.” Some of that discussion is applicable to this subrule.

d. The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material in which it will be used in manufacturing or in the form of a product which will be sold for use other than as a raw material in manufacturing. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, and

crates and other waste wood into wood chips. After grinding, the wood chips are sold and transported to purchasers to various sites where the chips are dumped on and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in reprocessing because, at the time the chips are placed in the truck, they are in the form in which they will be sold for use other than as a raw material in manufacturing.

This rule is intended to implement Iowa Code section 422.45(26), Iowa Code section 422.45(27) as amended by 1996 Iowa Acts, chapter 1049, and Iowa Code section 422.45(29).

701—18.46(422,423) Automotive fluids. The gross receipts from the sales of certain automotive fluids are exempt from tax. To be considered exempt, the sale must possess the following characteristics: (1) the sale must be to a retailer who will install the automotive fluid in or apply the automotive fluid to a motor vehicle; and (2) the installation or application must be done while the retailer is providing a taxable enumerated service (e.g., automobile lubrication); or (3) the automotive fluid must be installed in or applied to a motor vehicle which the retailer intends to sell and the sale of which will be subject to Iowa use tax.

Specific but nonexclusive examples of “automotive fluids” are motor oil and other automobile lubricants, hydraulic, brake, and transmission fluids, sealants, undercoatings, antifreeze, and gasoline additives.

This rule is intended to implement Iowa Code section 422.45(33).

701—18.47(422,423) Maintenance or repair of fabric or clothing.

18.47(1) As of July 1, 1987, sales of chemicals, solvents, sorbents, or reagents consumed in the maintenance or repair of fabric or clothing are exempt from tax. See 701—subrule 17.14(1) for definitions of the terms “chemical, solvent, sorbent or reagent.” This subrule’s exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is “directly used” in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances which do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing but direct use will not be presumed.

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

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

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

18.47(2) Also, on and after July 1, 1987, the sale of property which is a container, label, or similar article or receptacle for transfer in association with the maintenance or repair of fabric or clothing is exempt from tax. In general, the sale of any article which protects dry-cleaned or laundered clothing from dirt or helps the dry-cleaned or laundered clothing to maintain its proper shape or form in the same fashion as a container does would be exempt from tax under this subrule. By way of nonexclusive example, the sale of plastic garment bags, which protect clothing from dirt, is exempt from tax. The sale of “shirt boards” and garment hangers, both of which help clothing to maintain its proper shape, would also be exempt.

A container, label, or similar article’s sale is exempt from tax only if the item is transferred to the customer of a commercial laundry, dry cleaner, or other retailer. Thus, “bundle bags” and “meese carts,”

used to transfer or transport clothing within a dry-cleaning establishment, are not subject to the exemption because these bags and carts remain with the dry cleaner and are not transferred to a customer.

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

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

This rule is intended to implement Division IV of Iowa Code chapter 422.

701—18.48(422,423) Sale or rental of farm machinery, equipment, replacement parts, and repairs used in livestock, dairy, or plant production. Sales or rental of farm machinery and equipment used in livestock or dairy production and replacement parts which occur on or after July 1, 1988, are exempt from sales and use tax. On and after July 1, 1995, machinery, equipment, and replacement parts used in the production of flowering, ornamental, or vegetable plants are exempt from tax. See rule 701—18.57(422,423).

18.48(1) Definitions and characterizations. For the purposes of this rule, the following definitions and characterizations of words apply.

a. “Machinery” means major mechanical machines or major components thereof which contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts which performs work by the expenditure of energy, either mechanical (e.g., gasoline or kerosene) or electrical.

b. “Equipment” is tangible personal property (other than a machine) directly and primarily used in livestock or dairy production. It may be characterized as property which performs a specialized function which, of itself, has no moving parts or if it does possess moving parts, its source of power is external to it. The following examples attempt to differentiate between machinery and equipment:

EXAMPLE A. An electric pump is used to pump milk into a bulk milk tank. The electric pump is machinery; the bulk milk tank is equipment.

EXAMPLE B. An auger places feed into a cattle feeder. If not “real property” (see 18.48(1) “c”) the auger is a piece of machinery; the cattle feeder is a piece of equipment.

c. Property used in livestock or dairy production which is neither “equipment” nor “machinery.”

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment, *Mid-American Growers, Inc. v. Dept. of Revenue*, 493 N.E.2d 1097 (Ill. App. Ct. 1986). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that it will become a part of the ground or the building is taxable. Generally, property incorporated into the ground or a building has become a part of the ground or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. The property referred to in 18.48(1) “c”(1) can be identified by applying the following test: Assume that the property is being sold to a contractor rather than a person engaged in livestock or dairy production. If sold to a contractor, would the retailer be required to consider the property “building material” and charge the contractor sales tax upon the purchase of this building material. If this is the case, sale of the property is not exempt from Iowa tax law. Iowa department of revenue rule 701—19.3(422,423) contains a characterization of “building material” and a list of specific examples of building material.

(2) “Supplies” are neither machinery nor equipment. Tangible personal property is part of farm supplies if it is used up or destroyed by virtue of its use in livestock or dairy production or, because of its nature, can only be used once in livestock or dairy production. A light bulb is an example of a farm supply which is not machinery or equipment. The sale of some farm supplies is exempt from tax. See

701—subrule 17.9(3). See List B in subrule 18.48(7) for examples of farm supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

d. “Hand tools” are tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in livestock or dairy production are exempt from tax as “equipment.” Mechanical devices that are held in the hand and driven by electricity or some source other than human muscle power are, if otherwise qualified, exempt from tax as “farm machinery.” See subrule 18.48(7), List C, for examples of “hand tools” exempt and not exempt from tax.

e. Directly used in livestock or dairy production. To determine if machinery or equipment is “directly” used in livestock or dairy production, one must first ensure that the machinery or equipment is used during livestock or dairy production and not before that process has begun or after it has ended. Subrule 18.48(1), paragraph “g,” describes when livestock or dairy production begins and ends. If the machinery or equipment is used in livestock or dairy production, to be “directly” so used, that use must constitute an integral and essential part of production as distinguished from a use in production which is incidental, merely convenient to or remote from production. The fact that machinery or equipment is essential or necessary to livestock or dairy production does not mean that it is also “directly” used in production. Machinery or equipment may be necessary to livestock or dairy production but so remote from it that it is not directly used in that production.

(1) In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questioned is to the machinery or equipment whose direct use is not questioned, the more likely it is that the former is directly used in livestock or dairy production.

2. The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questioned. The closer in time the use, the more likely that the questioned machinery or equipment’s use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and livestock or dairy production. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

(2) The following are examples of machinery and equipment directly used in livestock or dairy production:

1. Machinery and equipment used to transport or limit the movement of livestock and dairy animals (e.g., electric fence equipment, head gates, and loading chutes).

2. Machinery and equipment used in the conception, birth, feeding, and watering of livestock or dairy animals (e.g., artificial insemination equipment, portable farrowing pens, feed carts, and automatic watering equipment).

3. Machinery and equipment used to maintain healthful or sanitary conditions in the immediate area where livestock are kept (e.g., manure gutter cleaners, automatic cattle oilers, fans, and heaters if not real property).

4. Machinery or equipment used to test or inspect livestock or dairy animals during production.

(3) The following are nonexclusive examples of machinery or equipment which would not be directly used in livestock or dairy production.

1. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in livestock or dairy production (e.g., welders, paint sprayers, and lubricators).

2. Machinery used in farm management, administration, advertising, or selling (e.g., a recordkeeping computer, calculating machine, office safe, telephone, books, and farm magazines).

3. Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).

4. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

5. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a farmer, the farmer's family or employees, or persons associated with the farmer are not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a farm home or of a migrant labor camp, or other facilities for farm employees.

6. Machinery and equipment used for heating, cooling, ventilation, and illumination of farm buildings generally rather than specifically in the immediate area where livestock are kept.

7. Vehicles subject to registration.

f. "Primarily" used in livestock or dairy production. Machinery or equipment is "primarily used in livestock or dairy production" if of the total time that unit of machinery or equipment is used, more than 50 percent of the time is in livestock or dairy production. If a unit of machinery or equipment is used more than 50 percent of the time for production and the balance of time for other business purposes, the exemption applies. If a unit of equipment is used 50 percent or more of the time for business purposes other than livestock or dairy production, the exemption does not apply. Any unit of machinery or equipment used more than 50 percent of the time directly in livestock or dairy production is subject to the exemption.

g. Beginning and end of livestock or dairy production. Livestock or dairy production begins with the purchase or breeding of livestock or dairy animals. Livestock and dairy production ceases when an animal or the product of an animal's body (e.g., wool or milk) has been transported to the point where it will be sold by the farmer or processed.

h. Farm machinery and equipment means machinery and equipment specifically designed for use in livestock and dairy production or equipment and machinery not specifically designed for this use but which are directly and primarily used in livestock or dairy production except for common or ordinary hand tools. See 18.48(1) "d" for a definition of "hand tools."

EXAMPLE. Farmer Jones raises livestock and fans must be used to cool the animals. Farmer Jones buys fans designed for use in a residence which he uses directly and solely to cool the livestock. The exemption applies.

i. "Self-propelled implement" has the same meaning as in 701—subrule 17.9(5), paragraph "c" where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

j. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, posthole diggers, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

k. The term "grain dryer" includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

l. The term "replacement parts essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products" does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, and tools or utility boxes.

18.48(2) *Right of refund for farm machinery and equipment used in livestock or dairy production, basic requirements.* Rescinded IAB 10/13/93, effective 11/17/93.

18.48(3) *Treatment of replacement parts.* Rescinded IAB 10/13/93, effective 11/17/93.

18.48(4) *Packing material used in agricultural, livestock, or dairy production.* For sales occurring on or after July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production are not subject to sales tax. This exemption also applies to producers of ornamental, flowering, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business since that activity is considered to be agricultural.

18.48(5) Rescinded IAB 11/20/96, effective 12/25/96.

18.48(6) *Auxiliary attachments exemption.* On and after July 1, 1995, sales of auxiliary attachments which improve the performance, safety, operation, or efficiency of machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt on and after that date.

18.48(7) *Lists.* Lists (representative but not all-inclusive) of tangible personal property for which sales or use tax paid is or is not refundable.

LIST A. Property Used in Livestock and Dairy
Production Which is Usually Real Property. See
18.48(1) "c"(1). Its sale is usually taxable.

barn ventilators*	livestock feeders*
conveyers*	silos
farrowing crates*	specialized flooring*
fence posts	sprinklers
fencing wire	stanchions
furnaces*	watering tanks*
gestation stalls*	ventilators*

*These items also appear in List D. Tax paid on their sale can be refundable or their sale exempt if the items are not real property.

LIST B. Taxable Farm Supplies
Which Are Not Machinery or Equipment

burlap*	lubricants
disposable hypodermic syringes	marking chalk
ear tags	packages for one-time use
hog rings	

*Burlap is exempt when used in the form of a bag, container, wrap or other receptacle or packaging material.

LIST C. Hand Tools—Taxable and Nontaxable

axes	lanterns
brooms	milk cans*
buckets	mops
cleaning brushes	paintbrushes
dehorner (nonelectric)*	pliers
garden hoses	scrapers
grease guns	screwdrivers
hammers	shovels
hay hooks*	wheelbarrows
hog ringers*	wrenches
lamps	

*Hand tools specially designed for use in livestock or dairy production are equipment. Tax paid on the sale or use of these hand tools is refundable.

LIST D. Farm Machinery and Equipment Directly and
Primarily Used in Livestock or Dairy Production.
Tax Paid is Usually Refundable or the Sale Exempt.

artificial insemination equipment	gates*
augers*	grain augers
automatic feeding systems*	head gates
bulk feeding tanks*	heating pads and lamps
bulk milk coolers	hog feeders*
bulk milk tanks	hypodermic syringes and needles, nondisposable
cattle weaners and feeders	livestock feeding, watering and handling equipment*
cattle currying and oiling machines	loading chutes*
cattle feeders*	LP gas tanks
conveyers*	manure handling equipment*
dehorner, electric	milk coolers
electric fence equipment	milk strainers
fans*	milking machines
farrowing crates, houses and stalls*	refrigerators used to cool raw milk
feed bins*	silos unloaders
feed carts	specialized flooring*
feed elevators*	space heaters
feed grinders	sprayers
feed tanks*	squeeze chutes*
feeders	vacuum coolers
foggers	ventilators*
furnaces*	

*If not real property. See 18.48(1) "c"(1).

18.48(8) Seller's and purchaser's liability for sales tax. The seller shall be relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery or equipment meeting the requirements of subrule 18.48(4). An exemption certificate can take the form of a stamp imprinted onto one of the documents of sale. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the tax directly to the department.

This rule is intended to implement Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.49(422,423) Aircraft sales, rental, component parts, and services exemptions prior to, on, and after July 1, 1999.

18.49(1) Prior to July 1, 1999, sales in Iowa of aircraft subject to registration were subject to sales tax. On and after July 1, 1999, sales of aircraft in Iowa are subject to Iowa use tax rather than Iowa sales tax. See rule 701—31.6(423). Also, on and after that date, the use tax imposed on sales of aircraft in Iowa is collected by the Iowa department of transportation at the time of the aircraft's registration. Sales of certain aircraft parts in Iowa, the performance of taxable services in Iowa on or in connection with the repair, remodeling, or maintenance of aircraft, and the rental of aircraft in Iowa remain subject to Iowa sales tax on and after July 1, 1999. See subrule 18.49(3).

18.49(2) For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air and is used in a scheduled interstate Federal Aviation Administration certified air carrier operation.

a. Exempt aircraft sales. As of July 1, 1988, and up to and including June 30, 1999, gross receipts from the sale of aircraft are exempt from tax.

b. Exempt rental of aircraft. Effective May 1, 1995, and retroactive to July 1, 1988, the taxable rental (see 701—26.74(422,423)) of aircraft, as defined in the introductory paragraph of this subrule, is exempt from tax.

c. Exempt sale or rental of aircraft parts. Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the sale or rental of tangible personal property permanently affixed to any aircraft as a component part of that aircraft are exempt from tax. The term "component parts" includes, but is not limited to, repair or replacement parts and materials.

d. Exempt performance of services. Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the rendering, furnishing, or performing of services in connection with the repair, remodeling, or maintenance of aircraft (including aircraft engines and component materials or parts) are exempt from tax.

18.49(3) For the purposes of this subrule only, an "aircraft" is any aircraft used in a nonscheduled interstate Federal Aviation Administration certified air carrier operation conducted under 14 CFR ch. 1, pt. 135. On and after July 1, 1998, the gross receipts from the sale or rental of tangible personal property permanently affixed or permanently attached as a component part of these aircraft, including but not limited to repair or replacement materials or parts, are exempt from tax. Also exempt, on and after that date, are the gross receipts from the performance of any service used for aircraft repair, remodeling, or maintenance when the service is performed on an aircraft, aircraft engine, or aircraft component material or part exempt under this subrule. Gross receipts from the sale or rental of aircraft are not exempt from tax under this subrule

18.49(4) For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air. On and after July 1, 1998, and up to and including June 30, 1999, the gross receipts from the sale of an aircraft to an aircraft dealer who rents or leases the aircraft to another are exempt from tax if all of the following circumstances exist:

- a.* The aircraft is kept in the inventory of the dealer for sale at all times.
- b.* The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.
- c.* The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

As soon as an aircraft, the sale of which is exempt under this subrule, is used for any purpose other than leasing or renting, or the conditions set out in paragraphs “a,” “b,” and “c” are not continuously met, the dealer claiming the exemption is liable for the tax which would have been due but for the exemption set out in this subrule. Tax will be computed on the original purchase price paid by the dealer.

See rule 701—32.13(423) for a description of the manner in which transactions described in this subrule are exempted from tax on and after July 1, 1999.

This rule is intended to implement Iowa Code section 422.45, subsections 38, 38A, 38B and 38C and Iowa Code section 423.2 as amended by 1999 Iowa Acts, chapter 168.

701—18.50(422,423) Property used by a lending organization. On and after July 1, 1988, the gross receipts from the sale of tangible personal property to a nonprofit organization organized for the purpose of lending the tangible personal property to the general public for use by the public for nonprofit purposes are exempt from tax. The exemption contained in this rule is applicable to tangible personal property only, and not to taxable services. It is applicable to the sale of that property and not to its rental to a nonprofit organization. Finally, the exemption is applicable only to property purchased by a nonprofit organization for subsequent rental to the general public. The exemption is not applicable to other property (e.g., office equipment) which the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 422.45(36).

701—18.51(422,423) Sales to nonprofit legal aid organizations. On and after July 1, 1988, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit legal aid organization are exempt from tax.

This rule is intended to implement Iowa Code subsection 422.45(37).

701—18.52(422,423) Irrigation equipment used in farming operations. On and after July 1, 1989, the gross receipts from the sale or rental of irrigation equipment used in farming operations are exempt from tax. The term “irrigation equipment” includes, but is not limited to, circle irrigation systems and trickle irrigation systems. The term “farming operations” has the same meaning as the term “agricultural production” set out in 701—subrule 17.9(3), paragraph “a,” and as further characterized in 18.44(2) “a.”

Effective May 18, 2001, and retroactive to April 1, 1995, the gross receipts from the sale or rental of irrigation equipment, as defined above, whether installed above or below ground are exempt from tax as long as the equipment is sold or rented by a contractor or farmer and the equipment is primarily used in agricultural operations.

Contractors or farmers entitled to the exemption set forth in the previous paragraph may apply for a refund of taxes, interest or penalties paid on the sale or rental of qualifying irrigation equipment for transactions that occurred between April 1, 1995, and May 18, 2001. To be eligible for refund, refund claims must be filed with the department prior to October 1, 2001. Refund claims are limited to \$25,000 in the aggregate and will not be allowed if not timely filed. If the amount of refund claims totals more than \$25,000 in the aggregate, the department will prorate the \$25,000 among all claimants in relation to the amounts of the claimants’ valid claims.

This rule is intended to implement Iowa Code section 422.45 and 2001 Iowa Acts, House File 723.

701—18.53(422,423) Sales to persons engaged in the consumer rental purchase business. On and after July 1, 1989, the gross receipts from the sale of tangible personal property, except vehicles subject to registration, to persons regularly engaged in the consumer purchase business are exempt from tax if the property (1) is sold for the purpose of utilization in a transaction involving a “consumer rental purchase agreement” as defined in Iowa Code subsection 537.3604(8), and (2) the gross receipts from the consumer rental of the property are subject to Iowa sales or use tax.

If property exempt under this rule is made use of for any purpose other than a consumer rental purchase, the person claiming the exemption is liable for the tax that would have been due had the exemption not existed. The tax shall be computed on the original purchase price to the person claiming

the exemption. The aggregate of the tax paid on the consumer rental purchase of the property, not exceeding the amount of sales or use tax owed, shall be credited against the tax.

This rule is intended to implement Iowa Code section 422.45(18).

701—18.54(422,423) Sales of advertising material. On and after July 1, 1990, gross receipts from the sales of advertising material to any person in Iowa are exempt from tax if that person, or any agent of that person, will, after the sale, send that advertising material outside of Iowa and subsequent sole use of that material will be outside this state.

For the purposes of this rule “advertising material” is tangible personal property only, including paper. “Advertising material” is limited to the following: brochures, catalogs, leaflets, fliers, order forms, return envelopes, floppy discs, CD-ROMs, videotapes, and any similar items of tangible personal property which will be used to promote sales of property or services.

This rule is intended to implement Iowa Code section 422.45.

701—18.55(422,423) Drop shipment sales. A “drop shipment” generally involves two sales transactions and three parties. The first party is a consumer located inside Iowa. The second party is a retailer located outside the state. The third party is a supplier who may be located inside or outside of Iowa. The two sales transactions in question are the sale of property from the supplier to the out-of-state retailer, and the further sale of that property from the out-of-state retailer to the consumer in Iowa.

A “drop shipment sale” occurs when the consumer places an order for the purchase of tangible personal property with the out-of-state retailer. The retailer does not own the property ordered at the same time the consumer’s order is placed. The retailer then purchases the property from the supplier. The supplier in turn ships the property directly to the consumer in Iowa. Under Iowa law the supplier in a drop shipment sale cannot be required to collect tax (either sales or use) from the consumer, even if the requisite “nexus” to require collection exists. See the next to last paragraph of this rule for a characterization of “nexus.” The supplier transfers possession of the goods to the consumer; however, transfer of possession alone has never been held to be a “sale” for the purposes of Iowa sales and use tax law. *Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985) and *Cedar Valley Leasing v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979).

With reference to drop shipment sales: If delivery of the goods under the contract for sale has occurred outside of Iowa, sale of the goods has occurred outside of Iowa. If delivery of the goods under the contract for sale has occurred within Iowa, the sale has occurred here. See *Sturtz* above for more information regarding sales and delivery. If the sale has occurred in Iowa and the retailer possesses the requisite nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa sales tax upon the “gross receipts” from its sale of the goods to the consumer. If the sale has occurred outside this state, and the retailer possesses the nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa retailer’s use tax upon the purchase price of the goods. If the retailer does not have nexus sufficient to require it to collect either Iowa sales or Iowa use tax, or if the retailer fails to collect either tax, the consumer is obligated to pay a consumer use tax directly to the department upon the purchase price of the goods. These rules are illustrated in the following examples.

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

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

EXAMPLE C: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to

the consumer in Des Moines. The retailer has nexus with Iowa, and delivery under the contract for sale occurs in Iowa. Under these circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

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

EXAMPLE E: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has no nexus with this state. Delivery can occur in either Minnesota or Iowa. In this example, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE F: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa, and delivery under the contract for sale is in Iowa. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE G: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa with delivery in Madison, Wisconsin. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa retailer's use tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE H: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has no nexus with Iowa. Delivery under the contract for sale may be in Iowa or Wisconsin. Under these circumstances, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

As used in these examples, the requirement of "nexus" is discussed in *Good's Furniture House Inc. v. Iowa State Bd. of Tax Review*, 382 N.W.2d 145 (Iowa 1986); cert. den. 479 U.S. 817; *State Tax Commission v. General Trading Co.*, 10 N.W.2d 659, 233 Iowa 877 (1943) affd. 64 S.Ct. 1028, 322 U.S. 335, 88 L.Ed. 1309; and *Nelson v. Sears, Roebuck & Co.*, 292 N.W. 130, 228 Iowa 1273 (1940) reversed 61 S.Ct. 586, 312 U.S. 359, 85 L.Ed. 522, as well as other judicial decisions, and Iowa Code section 422.43(12).

This rule is intended to implement Iowa Code subsections 422.42(2) and 422.42(5).

701—18.56(422,423) Wind energy conversion property. On and after July 1, 1993, the gross receipts from the sale of property used to convert wind energy to electrical energy or the gross receipts from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy shall be exempt from tax.

For the purposes of this rule, "property used to convert wind energy to electrical energy" means any device which converts wind energy to usable electrical energy including, but not limited to, wind chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 422.45 as amended by 1993 Iowa Acts, chapter 161.

701—18.57(422,423) Exemptions applicable to the production of flowering, ornamental, and vegetable plants. On and after July 1, 1995, the production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production. The word "plants" does not include trees, shrubs, other woody perennials,

or fungus. The exemption also applies to implements, machinery, equipment, and replacement parts directly and primarily used in the production of flowering, ornamental, or vegetable plants and fuel used for providing heating or cooling for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The following exemptions are applicable to the production of flowering, ornamental, or vegetable plants.

18.57(1) Sales of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, insect control, or other health promotion of flowering, ornamental, or vegetable plants to a commercial greenhouse are exempt from tax. For the purposes of this subrule a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an “insecticide” or “pesticide.” See rules 701—17.4(422,423) and 17.9(422,423) for more information regarding these exemptions.

18.57(2) Sales of fuel to provide heating or cooling for a greenhouse or building or a part of a building dedicated to the production of flowering, ornamental, or vegetable plants held for sale in the ordinary course of business are exempt from tax. Electricity is a “fuel” for the purposes of this subrule. Fuel used in a plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in plant production (e.g., heating or cooling office space) is not eligible for this exemption. For example, assume that there is a separate meter for electricity used only for heating or cooling. If a greenhouse is used, partially for growing plants and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage calculated from a fraction, the numerator of which is the number of square feet of the greenhouse heated or cooled and used for raising plants, and the denominator of which is the number of square feet heated or cooled in the entire greenhouse. It may be necessary to alter this formula (by the use of separate metering, for example) if a greenhouse has a walk-in cooler and the cooler is used directly in plant production. Plant production has ended when a plant has grown to the point that it is of the size or weight at which it will be prepared for shipment to the destination where it will be marketed. Examples of nonexempt purposes for which a portion of a greenhouse might be used include, but are not limited to, portions used for office space, loading docks, storage of property other than plants, housing of heating and cooling equipment and portions used for packaging plants for shipment. See rule 701—15.3(422,423) regarding fuel exemption certificates and subrule 18.48(8) regarding seller’s and purchaser’s liability for sales tax.

18.57(3) Sales of gas, electricity, steam or other tangible personal property for use as a fuel in implements of husbandry used in the production of plants in a commercial greenhouse or elsewhere are exempt from tax. See 701—subrule 17.9(6), paragraph “a,” for a definition of “implements of husbandry.”

18.57(4) Sales of self-propelled implements. Sales of self-propelled implements or implements customarily drawn by or attached to self-propelled implements and replacement parts for the same are exempt from tax if the implements are used directly and primarily in the production of plants in commercial greenhouses or elsewhere. See rule 701—18.44(422,423) for an extensive explanation of this exemption. Implements exempt under this subrule include, but are not limited to, forklifts used to transport pallets of plants; wagons containing sterilized soil and tractors used to pull the same.

18.57(5) Sale of water used in the production of plants is exempt from tax. If water is not separately metered, the grower of plants must determine by use of a percentage that portion which is used for a taxable purpose and that portion which is used for an exempt purpose.

Nonexclusive examples of taxable usage would be rest rooms, sanitation, lawns, and vehicle wash.

18.57(6) For sales occurring on or after July 1, 1996, the gross receipts for the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production are not subject to sales tax. This exemption also applies to producers of ornamental, flowering, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business since that activity is considered to be agricultural. A noninclusive list of containers and packaging materials would include boxes, trays, labels, sleeves, tape, and staples.

18.57(7) Sales of machinery and equipment used in plant production which are not self-propelled or attached to self-propelled machinery and equipment are also exempt from tax. See rule 701—18.48(422,423) for a thorough explanation of this exemption. Listed below are a number of examples of machinery and equipment which are directly and primarily used in plant production. Sales of this machinery and equipment to commercial growers are usually exempt from tax.

- Air-conditioning pads*
- Airflow control tubes
- Atmospheric CO₂ control and monitoring equipment
- Backup generators
- Bins holding sterilized soil
- Control panels = heating and cooling
- Coolers used to chill plants*
- Cooling walls* or membranes
- Equipment used to control water levels for subirrigation
- Fans = cooling and ventilating*
- Floor mesh for controlling weeds
- Germination chambers
- Greenhouse boilers*
- Greenhouse netting or mesh = used for light and heat control
- Greenhouse monorail systems*
- Greenhouse thermometers
- Handcarts used to move plants
- Lighting which provides artificial sunlight
- Overhead heating, lighting and watering systems
- Overhead tracks for holding potted plants*
- Plant tables*
- Plant watering systems*
- Portable buildings used to grow plants*
- Seeding and transplanting machines
- Soil pot and soil flat filling machines
- Steam generators for soil sterilization*
- Warning devices = excess heat or cold
- Watering booms

*If not real property. See 18.48(1) “c”(1).

18.57(8) Miscellaneous exempt and taxable sales. Sales of pots, soil, seeds, bulbs, and “starter plants” for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product. Sales of portable buildings which will be used to display plants for retail sales are taxable. Finally, sales of whitewash which will be painted on greenhouses to control the amount of sunlight entering those houses are taxable sales of a “supply” rather than exempt sales of equipment. See 18.48(1) “c”(2) relating to “supplies.” See rule 701—18.7(422,423) relating to containers, including packaging cases, shipping cases, wrapping materials, and similar items sold to retailers, and see subrule 18.57(6).

This rule is intended to implement Iowa Code sections 422.42(1), 422.42(4), 422.42(11), 422.45(39) and 422.47(4) and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.58(422,423) Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997. The sale or rental of machinery, equipment, or computers used by a manufacturer in processing; the sale or rental of a computer used in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise; and the sale or rental of various other types of tangible personal property are, under certain circumstances, exempt from tax as of July 1, 1997.

18.58(1) Definitions. The following terms are defined for the purposes of this rule in the manner set out below.

“Commercial enterprise” includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a “commercial enterprise.” The term “professions” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term “occupations” means the principal business of an individual. Included within the meaning of “occupations” is the business of farming. A professional corporation which carries on any business which is a “profession” or “occupation” is not a commercial enterprise.

“Computer” means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of “computer” is point-of-sale equipment. For a characterization of “point-of-sale equipment,” see 701—subrule 71.1(7). Also included within the meaning of the word “computer” is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedures of a computer. An operating system or executive program is exempt from sales tax only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 18.34(422,423). Excluded from the meaning of the word “computer” is any software consisting of an application program. For purposes of this subrule, “operating system or executive program” means a computer program which is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software which is a collection of one or more programs used to develop and implement the specific applications which the computer is to perform, and which calls upon the services of the operating system or executive program.

“Contract manufacturer” is any manufacturer who falls within the definition of “manufacturer” set out subsequently in this subrule except that a contract manufacturer does not sell the tangible personal property which it processes on behalf of other manufacturers.

“Directly used.” Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

“Financial institution” is a bank incorporated under any state or federal law; a savings and loan association incorporated under any state or federal law; a credit union organized under any state or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

“Insurance company” means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or authorized to do business in Iowa as an insurer or as a licensed insurance agent under Iowa Code chapter 522. Excluded from the definition of “insurance company” are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

“Machinery and equipment” means machinery and equipment used by a manufacturer. Machinery is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The term also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be “machinery.” See *Deere Manufacturing Co. v. Zeiner*, 247 Iowa 1264, 78 N.W.2d 527 (1956). Also see the definition of “replacement parts” *infra*. Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are tables on which property is assembled on an assembly line and chairs used by assembly line workers.

“Manufacturer” means any person, firm, or corporation that purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; and the activities of restaurateurs, hospitals, medical doctors, and those who merely process data are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County*, 332 N.W.2d 116 (Iowa Ct. App. 1982). The term “manufacturer” includes a contract manufacturer. Ordinarily, the word does not include those commercial enterprises engaged in quarrying or mining. However, effective July 1, 1998, a commercial enterprise, the principal business of which is quarrying or mining, is a manufacturer with respect to activities in which it engages subsequent to quarrying or mining. These subsequent activities include, by way of nonexclusive example, crushing, washing, sizing, and blending of aggregate materials.

EXAMPLE: Company A owns and operates a gravel pit. It sells the gravel extracted from the pit to others who use the gravel for surfacing roads and as an ingredient in concrete manufacture. Company A removes overlay and raw gravel from the pit. It then transports the gravel to a plant where washing and sizing of the gravel take place. Company A is a manufacturer, but only with respect to those activities which occur after it severs the gravel from the ground.

“Pollution control equipment” means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. The term does not include any apparatus used to eliminate “noise pollution.” Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.” “Pollution control equipment” specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or the United States Government. Wastewater treatment facilities and scrubbers used in smokestacks are examples of pollution control equipment. However, pollution control equipment does not include any equipment used only for worker safety (e.g., a gas mask).

“Processing” means a series of operations in which materials are manufactured, refined, purified, created, combined, transformed, or stored by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes, but is not limited to, refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components or products; quality control activities; construction of packaging and shipping devices; placement into shipping containers or any type of shipping device or medium; and the movement of materials, components, or products until shipment from the manufacturer.

“Processing or storage of data or information.” All computers store and process information. However, only if the “final output” for a user or consumer is stored or processed data will the computer be eligible for exemption of tax.

“Receipt or producing of raw materials” means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, “production of raw materials” is deemed to occur immediately following the severance of the raw materials from the real estate.

“Recycling” means any process by which waste or materials which would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. “Recycling” does not include any form of energy recovery.

“Replacement parts.” A “replacement part” is any machinery, equipment, or computer part which is substituted for another part that has broken, has become worn out or obsolete, or is otherwise unable to perform its intended function. “Replacement parts” are those parts which materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives or keep them in their ordinarily efficient operating condition. Excluded from the meaning of the term “replacement parts” are supplies, the use of which is necessary if machinery is to accomplish its intended function. Drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters are nonexclusive examples of supplies. Sales of supplies remain taxable.

Tangible personal property with an expected useful life of 12 months or more which is used in the operation of machinery, equipment, or computers is rebuttably presumed to be a “replacement part.” Tangible personal property used in the same manner with an expected useful life of less than 12 months is rebuttably presumed to be a “supply.”

“Research and development” means experimental or laboratory activity which has as its ultimate goal the development of new products or processes of processing. Machinery, equipment, and computers are used “directly” in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

18.58(2) Exempt sales. On and after July 1, 1997, sales or rentals of the following machinery, equipment, or computers (including replacement parts) are exempt from tax:

a. Machinery, equipment, and computers directly and primarily used in processing by a manufacturer.

b. Machinery, equipment, and computers directly and primarily used to maintain a manufactured product’s integrity or to maintain any unique environmental conditions required for the product.

c. Machinery, equipment and computers directly and primarily used to maintain unique environmental conditions required for other machinery, equipment, or computers used in processing by a manufacturer.

d. Test equipment directly and primarily used by a manufacturer in processing to control the quality and specifications of a product.

e. Machinery, equipment, or computers directly and primarily used in research and development of new products or processes of processing.

f. Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

g. Machinery, equipment, and computers directly and primarily used in recycling or reprocessing of waste products.

h. Pollution control equipment used by a manufacturer. It is not necessary that the equipment be “directly and primarily” used in any kind of processing.

i. Materials used to construct or self-construct any machinery, equipment, or computer, the sale of which is exempted by paragraphs “a” through “h” above.

j. Exempt sales of fuel and electricity. Sales of fuel or electricity consumed by machinery, equipment, or computers used in any exempt manner described in paragraphs “a,” “b,” “c,” “d,” “e,” “g,” and “h” of this subrule are exempt from tax. Sales of electricity consumed by computers used in the manner described in paragraph “f” remain subject to tax.

18.58(3) *Examples of exempt items.* Sales of the following nonexclusive types of machinery and equipment, previously taxable, are exempt on and after July 1, 1997, if that machinery or equipment is sold for direct and primary use in processing by a manufacturer: coolers which do not change the nature of materials stored in them; equipment which eliminates bacteria; palletizers; storage bins; property used to transport raw, semifinished, or finished goods; vehicle-mounted cement mixers; self-constructed machinery and equipment; packaging and bagging equipment (including conveyer systems); equipment which maintains an environment necessary to preserve a product's integrity; equipment which maintains a product's integrity directly; quality control equipment and electricity or other fuel used to power the machinery and equipment mentioned above.

18.58(4) *Processing—beginning to end.*

a. The beginning of processing. Processing begins with a manufacturer's receipt or production of raw material. Thus, when a manufacturer produces its own raw material it is engaged in processing. Processing also begins when raw materials are transferred to a manufacturer's possession by a manufacturer's supplier.

b. The completion of processing. Processing ends when the finished product is transferred from the manufacturer or delivered for shipment by the manufacturer. Therefore, a manufacturer's packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

c. Examples of the beginning, intervening steps, and the ending of processing. Of the following, Examples A and B illustrate when processing begins under various circumstances; Example C demonstrates the middle stages of processing; and Example D demonstrates when the end of processing takes place.

EXAMPLE A. Company A manufactures fine furniture. Company A owns a grove of walnut trees which it uses as raw material. A's employees cut the trees, transport the logs to A's factory, offload them there, and store the logs in a warehouse (to begin the curing of their wood) before taking them to A's sawmill. The walnut trees are real property, *Kennedy v. Board of Assessment and Review*, 276 N.W. 205, 224 Iowa 405 (1937). Thus, no "production of raw materials" has occurred with regard to the trees until they have been severed from the soil and transformed into logs. In this example, "processing" of the logs begins when they are placed on vehicles for transport to A's factory. However, note that even though the transport vehicles are used in processing, if they are "vehicles subject to registration," their use is not exempt from tax. See 18.58(6) "d" infra.

EXAMPLE B. Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its own equipment to offload the logs from railroad cars at its manufacturing facility and then transports, stores, and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C. Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer which it brews. It also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing whether those stages involve the transformation of the raw materials from one state to another, e.g., fermentation or aging, or simply involve holding the materials in an existing state, e.g., storage of hops in a bin or storage of the beer immediately prior to bottling. Also, any movement of the beer between containers is an activity which is a part of processing, whether this movement is an "integral part" of the production of the beer or not.

EXAMPLE D. After the brewing process is complete, Company C places its beer in various containers, stores it, and moves the beer to its customers by a common carrier that picks up the beer at C's brewery. C's activities of placing the beer into bottles, cans, and kegs, storing it after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are activities which are part of processing.

18.58(5) *Various unrelated inclusions in and exclusions from this exemption.*

a. The following are nonexclusive examples of machinery which is not directly used in processing:

(1) Machinery used exclusively for the comfort of workers. Examples are air cooling, air conditioning, and ventilation systems.

(2) Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained, or repaired.

(3) Machinery used by administrative, accounting, and personnel departments.

(4) Machinery used by plant security, fire prevention, first aid, and hospital stations.

(5) Machinery used in plant communications and safety.

b. The following is an example of property directly used in research and development. Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory: a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a “steam cleaner” for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director’s secretary. The computer and the microscope are “directly” used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

c. The following is an example of computers used and not used in processing or storage of information or data. A health insurance company has four computers. Computer A is used to monitor the temperature within the insurance company’s building. The computer transmits messages to the building’s heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefits paid out for various classes of insured. Computer D is used to train the insurance company’s employees to perform various additional tasks or to better perform work they can already do. Computer D uses various canned programs to accomplish this. The “final output” of Computer A is neither stored nor processed information. Therefore, Computer A does not fit the definition of an exempt computer. The final output of Computer B is stored information. The final output of Computer C is processed information. The final output of Computer D is processed information consisting of the training exercises appearing on the computer monitor. The sale, lease, or use of Computers B, C, and D would qualify for exemption.

d. The following is an example of property not used in processing. A manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns, and the metal press machine is used for no other purpose than to fabricate the patterns. The metal press machine is not used in processing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

18.58(6) Exceptions. Sales of the following machinery, equipment, or computers are not exempt:

a. Machinery, equipment, or computers assessed by the department of revenue pursuant to Iowa Code chapters 428, 433, 434, and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to, as well as owned by, the company is assessed by the department. See 701—Chapters 71 and 77.

b. Hand tools. These are tools which can be held in the hand or hands and which are powered by human effort.

c. Point-of-sale equipment. See 701—subrule 71.1(7).

d. Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

e. Machinery and equipment purchased by a person engaged in processing who is not a manufacturer. Restaurants, retail bakeries, food stores, and blacksmith shops are nonexclusive examples of businesses which process tangible personal property but are not manufacturers as that word is defined for the purposes of this rule.

f. The fact that the acquisition cost of rented or purchased machinery, equipment, or computers can be capitalized for the purposes of Iowa or federal income tax law is not an indication that their sale or rental would be exempt from tax under this rule.

18.58(7) *Lessor purchases of machinery, equipment, or computers.* The analysis regarding lessor purchases of farm machinery and equipment contained in subrule 18.44(3) explains that same problem regarding machinery, equipment, and computers.

18.58(8) *Designing or installing new industrial machinery or equipment.* The gross receipts from the services of designing or installing new industrial machinery or equipment are exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to exemption under this rule. In addition, the machinery or equipment must be “new.” For purposes of this subrule, “new” means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt, or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A “computer” is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

18.58(9) *Property used in recycling or reprocessing of waste products.* Gross receipts from the sale or rental of machinery (including vehicles subject to registration), equipment, or computers directly and primarily used in the recycling or reprocessing of waste products are exempt from tax. “Reprocessing” is not a subcategory of “processing.” Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an end loader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. The sale of a bin for storage ordinarily would not be exempt from tax; storage without more activity would not be a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing. For example, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. A person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

a. By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

b. Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.58(1) for the definition of “directly used” which is applicable to this subrule. The examples of machinery not directly used in processing set out in 18.58(5) “a” should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.58(5) “a”(4)) is not machinery directly used in recycling or reprocessing.

c. Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an “integral part” of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling

or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of “processing.” Some of that discussion is applicable to this subrule.

d. The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material or in the form of a product. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, crates, and other waste wood into wood chips. After grinding, the wood chips are sold and transported to various sites where the chips are dumped and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in recycling because at the time the chips are placed in the truck they are in the form in which they will be used in erosion control.

This rule is intended to implement Iowa Code Supplement section 422.45(27) as amended by 1998 Iowa Acts, Senate File 2288; Iowa Code section 422.45(29); and Iowa Code chapter 423.

701—18.59(422,423) Exempt sales to nonprofit hospitals. On and after July 1, 1998, the gross receipts from sales or rentals of tangible personal property to and from the rendering, furnishing, or performing of services for a nonprofit hospital licensed under Iowa Code chapter 135B are exempt from tax if the property or service purchased is used in the operation of the hospital. A hospital is not entitled to claim a refund for tax paid by a contractor on the sale or use of tangible personal property or the performance of services in the fulfillment of a written construction contract with the hospital. However, see the circumstances set out below in which sales of goods, wares or merchandise, or taxable services to a hospital for use in the fulfillment of a construction contract, are exempt from Iowa tax.

For the purposes of this rule, the word “hospital” means a place which is devoted primarily to the maintenance and operation of facilities for diagnosis, treatment, or care, over a period exceeding 24 hours, of two or more nonrelated individuals suffering from illness, injury, or a medical condition (such as pregnancy). The word “hospital” includes general hospitals, specialized hospitals (e.g., pediatric, mental, and orthopedic hospitals, and cancer treatment centers), sanatoriums, and other hospitals licensed under Iowa Code chapter 135B. Also included are institutions, places, buildings, or agencies in which any accommodation is primarily maintained, furnished, or offered for the care, over a period exceeding 24 hours, of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care. Excluded from the meaning of the term “hospital” are institutions for well children; day nursery and child care centers; foster boarding homes and houses; homes for handicapped children; homes, houses, or institutions for aged persons which limit their function to providing food, lodging, and provide no medical or nursing care, and house no bedridden person; dispensaries or first-aid stations maintained for the care of employees, students, customers, members of any commercial or industrial plan, educational institution, or convent; freestanding hospice facilities which operate a hospice program in accordance with 42 CFR § 418 and freestanding clinics which do not provide diagnosis, treatment, or care for periods exceeding 24 hours. This list of inclusions and exclusions is not exclusive. For additional information see 481—Chapter 51.

Ordinarily, goods, wares, or merchandise (such as building materials, supplies, and equipment; see rule 701—19.3(422,423) for definitions) which is purchased by a hospital and used by a contractor in the fulfillment of a written contract with the hospital cannot be purchased exempt from Iowa tax. The goods, wares, and merchandise used in the fulfillment of these construction contracts are not used in the “operation” of a hospital but in activities at least one step removed from that operation. See *Polich v. Anderson-Robinson Coal Co.*, 227 Iowa 553, 288 N.W. 650 (1939).

However, for a limited period, the gross receipts from all sales of goods, wares, or merchandise or from services rendered, furnished, or performed are exempt from tax (or a claim for refund may be filed for tax paid) if the tangible personal property or the taxable service is used in the fulfillment of a written construction contract with a hospital and all of the following circumstances exist:

1. Deliveries under contracts of sale of the goods, wares, or merchandise occurred or the taxable services were rendered, furnished, or performed between July 1, 1998, and December 31, 2001, inclusive. A claim for refund may be filed for any tax paid for this period, so long as the claim is filed prior to April 1, 2002, and the requirements of “2” and “3” below are also met. Claims for refunds of tax, interest,

or penalty paid for the period of July 1, 1998, to December 31, 2001, are limited to \$25,000 in the aggregate. If the amount of the claimed refunds for this period totals more than \$25,000, the department must prorate the \$25,000 among all claimants in relation to the amounts of the claimants' valid claims.

2. The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

3. The property or services were purchased directly by the hospital or by a contractor as an agent of the hospital. For the purposes of this exemption, no hospital can retroactively designate a contractor to be its agent and by this means transform a contractor's purchases of goods, wares, merchandise, or services into its own. Upon the department's request, a hospital claiming that a contractor is or has been its purchasing agent must present suitable evidence of a principal-agent relationship between itself and the contractor during any period for which exempt sales or a refund is claimed. The best evidence of a principal and purchasing agent relationship is a written document setting out the terms of the relationship and the period for which the agency is in effect; however, other evidence, which is the equivalent of a written document in reliability, will be considered by the department when necessary.

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1207.

701—18.60(422,423) Exempt sales of gases used in the manufacturing process. Effective May 24, 1999, but retroactive to January 1, 1991, sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases which are similar to argon. An "inert gas" is any gas which is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, nitrogen, carbon dioxide, helium, neon, krypton, and xenon are nonexclusive examples of inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases which are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for used in "processing," as those terms are defined in subrule 18.45(1), for the period prior to July 1, 1997, and as those terms are defined in subrule 18.58(1) for the period beginning July 1, 1997.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 170.

701—18.61(422,423) Exclusion from tax for property delivered by certain media. For the period beginning March 15, 1995, a taxable "sale" of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. This exclusion from tax is not applicable to any leasing of tangible personal property, a lease not being a "sale" of tangible personal property for the purposes of Iowa sales and use tax law, *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979). The exclusion is also not applicable to property delivered by any medium other than those listed above. Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, "canned" software (see subrule 18.34(1)), entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except the exclusion does not repeal by implication the tax on the service of providing pay television. See rule 701—26.56(422). If an order for a product is placed by way of any of the media described above but the product ordered is delivered by conventional, physical means, e.g., the U.S. Postal Service or common carrier, sale of the product is not excluded from tax under this rule.

This rule is intended to implement Iowa Code Supplement section 422.43 as amended by 2002 Iowa Acts, Senate File 2321.

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TITLE III
SALES TAX ON SERVICES
CHAPTER 26
SALES AND USE TAX ON SERVICES

[Prior to 12/12/74, appeared as Ch 5, IDR]
[Prior to 12/17/86, Revenue Department[730]]

701—26.1(422) Definition and scope. This rule provides the scope and definitions applicable to the area of services.

26.1(1) Definitions. The phrase “persons engaged in the business of” as used herein shall mean persons who offer the named service to the public or to others for a consideration whether such person offers the service continuously, part-time, seasonally or for short periods. The Iowa sales tax law imposes for periods prior to July 1, 1992, a tax of 4 percent and for periods on or after July 1, 1992, a tax at the rate of 5 percent upon the gross receipts from the rendering, furnishing or performing at retail of certain enumerated services, hereinafter described in more detail in this chapter.

26.1(2) Taxable and nontaxable services. When taxable and nontaxable services are performed as part of one transaction and the charge for the transaction is a lump-sum fee that is not itemized or separately contracted, the taxation of the fee for the entire transaction is determined by the predominant service being performed. *Iowa Movers and Warehousemen’s Association v. Briggs*, 237 N.W.2d 759 (Iowa 1976). If the predominant service being provided in the transaction is a taxable enumerated service, then the entire fee for the transaction is subject to Iowa tax. However, if the predominant service being performed is a nontaxable service, then the entire fee charged for the transaction is not subject to Iowa tax.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47 and 423.2.

701—26.2(422) Enumerated services exempt. Tax shall not apply on any of the following services.

26.2(1) Services on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, or the services of a general building contractor, architect or engineer. *Iowa Movers and Warehousemen’s Association v. Briggs*, Equity No. 75910, Polk County District Court, May 8, 1974.

26.2(2) A taxable service which is utilized in the processing of tangible personal property for use in taxable retail sales or services.

26.2(3) A service which is performed in interstate commerce in such a manner that imposition of tax would violate the commerce clause of the United States Constitution. Services performed on tangible personal property on or after May 20, 1999, are exempt from tax if those services are performed on property which the retailer of the property transfers to a carrier for shipment to a point outside Iowa, places in the United States mail or parcel post directed to a point outside Iowa, or transports to a point outside Iowa by means of the retailer’s own vehicles and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption does not apply to services performed on property if the purchaser, consumer, or the agent of either a purchaser or consumer, other than a carrier, takes physical possession of the property in Iowa.

26.2(4) Services rendered, furnished or performed for an “employer” as defined in Iowa Code subsection 422.4(15).

26.2(5) Those exemptions in 701—Chapter 17 applicable to both sale of services and sale of tangible personal property, excluding those exemptions pertaining only to the sale of tangible personal property.

26.2(6) A service which is purchased for resale. A service is purchased for resale when it is subcontracted by the person who is contracted to perform the service. For example:

a. X is a printer and enters into a contract with Y to print 500 bulletins. X subcontracts the job to Z. Z prints the 500 bulletins for X. There is no tax on the contracts between X and Z since X is purchasing the printing service from Z for resale to Y.

b. B owns a used car lot. E purchases an automobile from B. As a condition of such sale, B agrees to make repairs to the automobile. However, B subcontracts such repair work to C. E has agreed to pay B for the repair services and for the sale price of the automobile. Under these circumstances, the repair

services furnished by C to B constitute a sale of such services to B for resale to E who is the consumer of these services.

c. B owns an auto repair shop and C brings an automobile in to have the air conditioner fixed. B is unable to fix the unit so the car is sent to G who is an air conditioning specialist. The sale of G's service to B is a sale for resale by B to C.

26.2(7) Services purchased which are not for resale. For periods beginning July 1, 1978, the tax on services is collectible at the time the service is complete even if not purchased by the ultimate beneficiary. For example:

a. B, a used car dealer, owns a used car lot and contracts an automobile repair job to C. B cannot purchase the repair service for resale merely because at some later date the automobile may be sold. Tax is due when the service is completed for the used car dealer. See *Iowa Auto Dealers v. Iowa Department of Revenue*, 301 N.W.2d 760 (Iowa 1981). This particular example does not apply to denote tax due after June 30, 1981. See subrule 26.2(8).

b. A operates a test laboratory business. A agrees to provide testing services to B. In the course of conducting the tests, A rents equipment from C. In computing the fee which B has agreed to pay A for testing services, A will include A's costs, including the rental A paid to C in rendering the testing services. Under these circumstances, A furnished B with testing services, and not with the equipment rental services which C furnished to A. A is the consumer of the equipment rental services which are not resold to B and B is the consumer of the testing services. See rule 701—15.3(422,423) regarding resale certificates.

26.2(8) Services are exempt from tax when used in the reconditioning or repairing of tangible personal property of the type which is normally sold in the regular course of the retailer's business and which is held for sale by the retailer. For example:

a. A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B tax-free because A is regularly engaged in selling refrigerators and will offer the refrigerator for sale when it is repaired.

b. B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax-free because B is regularly engaged in selling used cars and will sell the used car after it is repaired.

c. C operates a retail farm implement dealership. C accepts a motorboat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motorboats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

d. XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television set that XYZ is going to sell. XYZ can purchase television repair service tax-free from W because XYZ is regularly engaged in selling television sets subject to sales tax. However, in this instance XYZ sells the used television and delivers it into interstate commerce with the result that the Iowa sales tax is not collectible. Regardless of this fact, the exemption is applicable, and no Iowa tax is due for the television repair services performed.

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(13) and 422.43.

701—26.3(422) Alteration and garment repair. Persons engaged in the business of altering or repairing any type of garment or clothing are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Included are the services rendered, furnished or performed by tailors, dressmakers, furriers and others engaged in similar occupations. When the vendor of garments or clothing agrees to alter same without charge when an individual purchases such garments or clothing, no tax on services, in addition to the sales tax paid on the purchase price of the article, shall be charged. However, if the vendor makes an additional charge for alteration, that additional charge shall be subject to the tax on the gross receipts from the services.

701—26.4(422) Armored car. Persons engaged in the business of either providing armored car service to others or converting a vehicle into an armored car are rendering, furnishing or performing a service,

the gross receipts from which are subject to tax. “Armored car” shall mean a wheeled vehicle affording defensive protection by use of a metal covering or other elements of ordinance. The exemption for transportation services shall not apply.

701—26.5(422) Vehicle repair. Persons engaged in the business of repairing vehicles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Repair” shall include any type of restoration, renovation or replacement of any motor, engine, working parts, accessories, body or interior of the vehicles, but shall not include installation of new parts or accessories which are not replacements, added to the vehicles. “Vehicle” shall mean a vehicle commonly used on a highway propelled by any power other than muscular power. The exemption for transportation services shall not apply.

A fee charged for the disposal of an item in connection with the performance of an enumerated service is subject to tax if the fee for the disposal of the item is not separately contracted for or itemized in the billing for the charge in the itemized service. However, if the fee charged for disposal of an item in connection with the performance of an enumerated service is itemized or separately contracted for, then the disposal fee is not subject to sales or use tax. Items that may be subject to a disposal fee in connection with a taxable service include, but are not limited to, air filters, oil, tires, and batteries.

Also see 701—subrule 18.31(2) relating to auto body shops.

This rule is intended to implement Iowa Code section 422.43(11).

701—26.6(422) Battery, tire and allied. Persons engaged in the business of installing, repairing, maintaining, restoring or recharging batteries, and services joined and connected therewith, and persons engaged in the business of installing, repairing, or maintaining tires, and services joined or connected therewith, for any type of vehicle or conveyance are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. The exemption for transportation services shall not apply.

A fee charged for the disposal of an item in connection with the performance of an enumerated service is subject to tax if the fee for the disposal of the item is not separately contracted for or itemized in the billing for the charge in the itemized service. However, if the fee charged for disposal of an item in connection with the performance of an enumerated service is itemized or separately contracted for, then the disposal fee is not subject to sales or use tax. Items that may be subject to a disposal fee in connection with a taxable service include, but are not limited to, air filters, oil, tires, and batteries.

This rule is intended to implement Iowa Code section 422.43.

701—26.7(422) Investment counseling. Persons engaged in the business of counseling others relative to investment in or disposition of property or rights, whether real, personal, tangible or intangible, where a charge is made for counseling, are rendering, furnishing or performing services, the gross receipts from which are subject to tax. Investment counseling does not include the mere management of a business or property. Where a retailer is rendering investment counseling services and also managerial services and the managerial services are not merely incidental to the investment counseling service, nor are the investment counseling services merely incidental to the managerial services and both are substantial and contracted for but neither is specifically identifiable, the tax shall apply to 50 percent of the total gross receipts therefrom.

Prior to July 1, 1987, the gross receipts from investment services rendered, furnished, or performed by trust departments were exempt from tax. On and after July 1, 1987, the gross receipts from investment counseling rendered, furnished, or performed by a trust department are subject to tax.

This rule is intended to implement Iowa Code section 422.43.

701—26.8(422) Bank and financial institution service charges.

26.8(1) Taxation of service charges before and after July 1, 1987. Prior to July 1, 1987, only the service charges of a “bank” were subject to tax. On and after July 1, 1987, the service charges of all “financial institutions” are subject to tax. For the period of July 1, 2002, through June 30, 2003, inclusive,

the term “service charges of financial institutions” does not include any surcharge assessed with regard to a nonproprietary ATM transaction.

a. Bank defined. A “bank” is an institution empowered to do all banking business, for example, an institution having the power and right to issue negotiable notes, discount notes, and receive deposits. Bank business consists of receiving deposits payable on demand and buying and selling bills of exchange. Savings and loan associations and other financial institutions not commonly considered to be banks are not considered a bank for the purposes of this rule.

b. Financial institution defined. “Financial institutions” include and are limited to all national banks; federally chartered savings and loan associations, federally chartered savings banks, and federally chartered credit unions; banks organized under Iowa Code chapter 524; savings and loan associations and savings banks organized under Iowa Code chapter 534; and credit unions organized under Iowa Code chapter 533.

26.8(2) Service charges characterized. The gross receipts from “service charges” which relate to a depositor’s checking account are the only gross receipts subject to tax under this rule, whether the service charges are those of a bank or of a financial institution. For the purposes of this rule, the term “checking account” is characterized with reference to its common meaning rather than any technical definition. An account in a bank or financial institution is a “checking account” if withdrawals may be made from the account by a written instrument, including but not limited to, instruments such as a check, a draft, or negotiable order of withdrawal (NOW). A checking account may or may not pay interest. NOW and Super NOW accounts are specifically included within the meaning of “checking account.” Excluded from the meaning of that term are certificates of deposit. The above definition is meant to be illustrative only and not all-inclusive. In the future, other types of checking accounts may be created which are not described herein.

Since only the gross receipts of bank or financial institution service charges which relate to a “checking account” are subject to tax, the same service performed by a financial institution could be taxable or not taxable depending upon whether it was performed or not performed in relation to a checking account.

EXAMPLE: A bank’s customer loses the bank’s monthly statement. The bank sends the customer another monthly statement but assesses the customer’s account a “duplicate statement fee.” If the duplicate statement fee is assessed on a “Super NOW” account, the gross receipts of the duplicate statement fee are subject to tax. If the duplicate statement fee is assessed against a savings account, the gross receipts from the duplicate statement fee are not subject to tax.

All charges relating to a “checking account” are taxable, not only those charges relating to withdrawals from the account by check. For example, charges for withdrawals by “bank card” from a checking account would be subject to tax except for surcharges assessed with regard to nonproprietary ATM transactions during the period set out in subrule 26.8(1). Charges for withdrawals by bank card from a “savings account” would not be subject to tax.

26.8(3) Various taxable charges. The following are nonexclusive examples of bank or financial institution service charges which, if related to checking accounts, are subject to tax:

- a.* Fees for transferring funds from one account to another (if billed to a checking account).
- b.* Stop payment charges.
- c.* Debit card replacement fees.
- d.* Copy and research fees.
- e.* Bill payment fees.
- f.* Returned deposit item fees.
- g.* The fee for issuing a “certified” check. A “certified” check is drawn from a particular account.

This is in contrast to a “bank cashier’s” check. See below.

26.8(4) Bank and financial institution service charges not subject to tax. The following bank and financial institution service charges are representative of those which are usually not subject to tax by virtue of their having no relationship to checking accounts. The list is not exclusive:

- a.* Safe deposit box fees for safe deposit box rentals.
- b.* Mortgage and loan fees.

c. Fees charged by trust departments for probating estates or administering trusts, for administering agency accounts, for administering pension and profit-sharing plans, for serving as a stock transfer agent or registrar, for serving as a farm manager, and fees or commissions charged to customers for handling security transactions. However, see rule 701—26.7(422). As of July 1, 1987, some of their services may be taxable as “investment counseling.”

d. Real estate appraisal fees. Fees collected for servicing real estate loans.

e. Fees for servicing real estate loans.

f. Fees charged for contract collection and other collections not related to the maintenance of a checking account.

g. Special lockbox handling charges.

h. Escrow agent fees.

i. Charges for handling and cashing coupons or certificates kept in the bank’s possession (safekeeping charges).

j. Finance charges, including credit card charges.

k. Penalty charges (interest forfeiture) on early withdrawal for savings certificates.

l. Charges for purchasing or selling securities for customers (if not a disguise for investment counseling fees).

m. Fees charged for collecting and transferring mortgage payments for a customer (real estate collection exchange).

n. Charges for traveler’s or similar type checks, bank cashier’s checks, bank drafts, or money orders when these instruments have no relation to a customer’s checking account.

o. Exchange fees for all check exchanges.

p. Effective May 30, 2003, fees charged by financial institutions defined in Iowa Code section 527.2 to a noncustomer that are imposed for point of sale, service charge, or access to an automated teller machine.

26.8(5) Miscellaneous. Fees charged to a checking account depositor which are, in essence, penalties for a depositor’s failure to adhere to contractual obligations with a bank or financial institution are not subject to tax, being more in the nature of “penalties” than service charges. For example, charges for overdrafts and returned checks would not be subject to tax.

Bank service charges which are never assessed against the expense of maintaining a checking account are not subject to tax.

EXAMPLE: Bank B normally charges \$10 per month for individual customer’s checking accounts. However, if a customer maintains an average monthly balance of at least \$750, the bank will charge only a \$5 service fee. Customer C maintains an average balance in an account of \$1,000 during the month of February. As a result of this, Bank B charges Customer C a service charge of \$5, and Customer C never owes Bank B a service charge of \$10. Customer C owes sales tax on the \$5 rather than the \$10 amount.

This rule is intended to implement Iowa Code section 422.43 and section 422.45 as amended by 2003 Iowa Acts, chapter 179, section 126.

701—26.9(422) Barber and beauty. Persons engaged in the business of hair cutting, hair styling, hair coloring, wig care, manicuring, pedicuring, applying facial and skin preparations, and all like activities which tend to enhance the appearance of the individual are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. Each “barber, beauty or other beautification shop or establishment” shall receive only one permit and remit tax as one enterprise, when operated under a common management.

When an operator leases space and is an independent operator, the lessee shall notify the department and secure a sales tax permit whereby the lessee will be responsible directly for the sales tax due. In order to be considered independent, the lessee must also be independent from the lessor for the purposes of withholding of income tax, unemployment compensation, and social security taxes.

The lessor who has leased a part of the premises shall report to the department the names and addresses of all lessees. If the lessor is accounting for the lessee’s sales, the lessor shall, after the name

of each lessee, show the amount of net taxable sales made by the lessee on each report to the department, and which net taxable sales are included in the lessor's return. See 701—15.11(422,423).

This rule is intended to implement Iowa Code section 422.43.

701—26.10(422) Boat repair. Persons engaged in the business of repairing watercraft are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include any type of restoration, renovation or replacement of any motor, engine, working part, accessory, hull or interior of the watercraft, but shall not include installation of new parts or accessories which are not replacements added to such watercraft.

701—26.11(422) Car and vehicle wash and wax. Prior to July 1, 1992, "car wash and wax" was the only type of vehicle washing and waxing which was a taxable service.

On and after July 1, 1992, all "vehicle wash and wax" is subject to tax. The gross receipts from these services shall be taxable whether they are performed by hand, machine or coin-operated devices. A "car" is any self-propelled motor vehicle designed primarily for carrying passengers (nine or fewer) excluding motorcycles and motorized bicycles. Any pickup truck, designed to carry both passengers and cargo, is a "car" for the purposes of this rule. A "vehicle" is any vehicle which is commonly used on a highway and propelled by any power other than muscular power. By way of nonexclusive example, motorcycles, motorized bicycles, all pickup trucks, tractors, and trailers are "vehicles" for the purposes of this rule.

This rule is intended to implement Iowa Code subsection 422.43(1).

701—26.12(422) Carpentry. Persons engaged in the business of repairing, as a carpenter, as the trade is known in the usual course of business, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Such structures may be either real or personal property.

701—26.13(422) Roof, shingle and glass repair. Persons engaged in the business of repairing, restoring or renovating roofs or shingles, or restoring or replacing glass, whether such glass is personal property or affixed to real property, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.14(422) Dance schools and dance studios. The gross receipts from services rendered, furnished or performed by dance schools or dance studios are subject to tax. A "dance school" is any institution established primarily for the purpose of teaching any one or more types of dancing. A "dance studio" is any room or group of rooms in which any one or more types of dancing are taught. If other activities such as acrobatics, exercise, baton twirling, tumbling or modeling are taught in dance schools, the gross receipts from the teaching of such activities are subject to tax.

701—26.15(422) Dry cleaning, pressing, dyeing and laundering. Persons engaged in the business of rendering, furnishing or performing dry cleaning, pressing, dyeing and laundering services, including those who engage in business by means of coin-operated washers, irons or mangles, dryers and dry cleaning machines are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. *Rodee, Inc. et al. v. State Tax Commission*, Equity No. 72674, Polk County District Court, December 12, 1968.

701—26.16(422) Electrical and electronic repair and installation. Persons engaged in the business of repairing or installing electrical wiring, fixtures, switches in or on real property or repairing or installing any article of personal property powered by electric current are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For purposes of this rule only, that electrical portion of the repair and installation of personal property powered by electric current is subject to tax. "Repair" is synonymous with mend, restore, maintain, replace, or service. A "repair" contemplates an existing structure or thing which has become imperfect and constitutes the restoration to the original existing structure that which has been lost or destroyed. A "repair" is not a capital improvement, that is, it does not materially add to the value or substantially prolong the useful life of

the property. "Installation" shall include affixing electrical wiring, fixtures or switches to real property, affixing any article of personal property powered by electric current to any other article of personal property, or making any article of personal property powered by electric current operative with respect to its intended functional purpose. For purposes of 26.2(1), service tax shall not apply on electrical installation or repair when the service is on or connected with a structural change to a building or similar structure, whether the structural change be internal or external to the building or structure. The electrical repair or installation on or connected with new construction on buildings or structures would not be subject to service tax.

On and after July 1, 1984, the services of electronic repair and installation are subject to tax. "Electronic" repair and installation is that which deals with the installation of semiconductors (e.g., vacuum tubes, transistors, or integrated circuits) or with the installation or repair of machinery or equipment which functions mainly through the use of semiconductors. It is this installation or repair of semiconductors or of machines functioning mainly by the use of semiconductors which distinguishes "electronic" installation and repair from "electrical" installation and repair.

On and after July 1, 1985, gross receipts from electrical or electronic installation are exempt from tax if those gross receipts are for the installation of new industrial machinery or equipment. See 701—subrule 18.45(7) for more information regarding this matter.

This rule is intended to implement Iowa Code section 422.43.

701—26.17(422) Engraving, photography and retouching. Prior to July 1, 1984, persons engaged in the business of engraving on wood, metal, stone or any other material, taking photographs, or renovating or retouching an existing likeness or design are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Photography" is the art or process of producing images or objects upon a photosensitive surface by the chemical action of light or other radiant energy. For treatment of these services on and subsequent to July 1, 1984, see rule 701—16.51(422,423).

701—26.18(422,423) Equipment and tangible personal property rental.

26.18(1) *Prior to July 1, 1984, only if tangible personal property was classified as "equipment" was its rental subject to tax.* Effective July 1, 1984, the rental of all tangible personal property, including equipment, is subject to tax.

a. Periods prior to July 1, 1984, equipment rental. Persons furnishing equipment to other persons for their use are rendering, furnishing, or performing a service subject to tax measured by the gross receipts or fees charged for the use of such equipment. In general usage, equipment refers to implements or tools used to produce a final product or achieve a given result. *KTVO, Inc. and KBIZ, Inc. v. Bair*, 255 N.W.2d 111 (Iowa 1977), and *State v. Bishop*, 257 Iowa 336 (1965). Not all tangible personal property is equipment and for the purpose of this rule, equipment will be considered to be an implement or a tool used to produce a final product or to achieve a given result. Thus, "equipment rental" would be applicable to such items as appliances, machinery, and utensils necessary to carry out a given task. It also includes such nonexclusive items as articles of clothing, safety shoes, police uniforms, and hard hats which contribute to the purpose of a person obtaining them for use. Whether the equipment rented functions in a state of rest or in a state of motion, it is taxable.

b. In order to determine whether a particular fee is charged for the use of equipment or for the rendering of a nontaxable service, the department looks at the substance, rather than the form, of the service being rendered. When the possession and use of equipment by the recipient is merely incidental as compared to the nontaxable service performed, all the gross receipts are derived from the furnishing of such nontaxable service and unless a separate fee or charge is made for the possession and use of equipment, no gross receipts are derived from the service of equipment rental. When the nontaxable service is merely incidental to the possession and use of the equipment by the recipient, all the gross receipts are derived from the furnishing of equipment rental and unless a separate fee or charge is made for the nontaxable service, no gross receipts are derived from the nontaxable service. When an equipment rental agreement contains separate fee schedules for rent and for nontaxable service, only the gross

receipts derived from the equipment rental service are subject to tax. This rule is not to be so construed as to be a variance with Iowa Code subsection 422.45(2) concerning transportation.

c. When equipment as defined herein is rented for a flat fee per month, per year, or for other designated periods, plus an additional fee based on quantity and capacity of production or use, the entire charge is taxable. The only exception is if the additional fee is a royalty payment. A royalty fee is not subject to tax if (a) it is separately contracted for and separately stated in the contract or on the billing, and (b) the royalty represents a true royalty. In determining whether a particular payment constitutes a true royalty, the following will be considered:

1. The intentions of the parties to the transaction.
2. The existence of a patent.
3. The relationship between the size of the royalty payment and the gross sales or manufacture of the patented equipment.
4. The primary business of the lessor.
5. Whether the royalty was paid for the technical know-how of the patented equipment.
6. Whether the royalty was paid for the privilege of using the patented equipment.

When examining the equipment rental agreement, substance will prevail over form and terminology employed by the parties to the agreement will not, in itself, be determinative of whether a true royalty exists. See *State v. Rockaway Corp.* (Ala. Civ. App. 1977), 346 So.2d 444, Cert. denied, 346 So.2d 451 (Ala. 1977).

d. The portion of this subrule relating to fees based on quantity and capacity of production use is effective for periods beginning on or after July 1, 1978.

26.18(2) *For periods beginning July 1, 1984, rental of tangible personal property.* The gross receipts from the rental of all tangible personal property shall be subject to tax. Tangible personal property is any personal property which is visible and corporeal, has substance and body or can be touched or handled. *RAMCO Inc. v. Director, Department of Revenue*, 248 N.W.2d 122 (Iowa 1976). Electromagnetic waves and other types of waves are not tangible personal property. *RAMCO Inc. supra*. Thus, the receipt of signals from a pay television company does not involve the rental of tangible personal property. See *Indiana Dept. of State Revenue, Sales Tax Division v. Cable Brazil Inc.*, 380 N.E.2d 555 (Ind. App. 1978). At common law, rental consists of consideration paid for the use or occupation of property, but not for passage of title, Black's Law Dictionary 1461 (4th Ed. 1968).

a. *Rentals not taxed under previous law.* Prior to July 1, 1984, only if tangible personal property consisted of "equipment" was its rental taxable. Equipment rental continues to be a service subject to tax under the present law. Equipment refers to implements or tools used to produce a final product or achieve a given result. *KTVO, Inc. and KBIZ, Inc. v. Bair*, 255 N.W.2d 111 (Iowa 1977) and *State v. Bishop*, 257 Iowa 336 (1965). The rental of certain tangible personal property not considered to be equipment is now subject to tax. As nonexclusive examples, clothing rental, such as tuxedos and formal gown rental, or costume rental; picture, painting, sculpture and other art work rental; plant rental to homes or businesses; and furniture rental are now subject to tax.

b. *Rental of real property distinguished from rental of tangible personal property.* If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incidental to that contract, tangible personal property is provided which allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the gross receipts are for the rental of real property and are not subject to tax.

If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property's use, the gross receipts from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

c. *Rental of tangible personal property and rental of fixtures.* The rental of tangible personal property which shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property which is connected to real property in a way that it cannot be

removed without damage to itself or to the real property is a fixture. *Equitable Life Assurance Society of the United States v. Chapman*, 282 N.W.2d 355 (Iowa 1983) and *Marty v. Champlin Refining Co.*, 36 N.W.2d 360 (Iowa 1949). The rental of a mobile home or manufactured housing, not sufficiently attached to realty to constitute a fixture, is room rental rather than tangible personal property rental and subject to tax on that basis; see *Broadway Mobile Home Sales Corp. v. State Tax Commission*, 413 N.Y.S.2d 231 (N.Y. 1979). See also rule 701—18.40(422,423).

d. Rental of tangible personal property embodying intangible personal property rights, transactions exempt and taxable. Under the law, the gross receipts from rental of tangible personal property include “royalties, and copyright and license fees.” The department interprets the legislature’s use of this phrase as evidence of the legislature’s intent to tax the rental of all property which is a tangible medium of expression for the intangible rights of royalties, copyright and license fees. Thus gross receipts from the rental of films, video disks, video cassettes, and any computer software (other than rental of custom programs, see 701—paragraph 18.34(3) “a”) which is the tangible means of expression of intangible property rights is subject to tax. The rental of such tangible property shall be subject to tax whether the property is held for rental to the general public or for rental to one or a few persons. See *Boswell v. Paramount Television Sales, Inc.*, 282 So.2d 892 (Ala. 1973). See rule 701—17.18(422,423) regarding the exemption from the requirements of this subrule for rental of films, video tapes and other media to lessees imposing a taxable charge for viewing or rental of the media or to lessees who broadcast the contents of this media for public viewing or listening.

e. Deposits. Taxability of a deposit required by an owner of rental property as a condition of the rental depends upon the type of deposit that is being required. A deposit subject to forfeiture for failure to comply with the rental agreement is not subject to tax. This type of deposit is separate from the rental payments and therefore is not taxable as part of the rental service. Such deposits may include those for reservation, late return of the rental property or damage to the rental property. Deposits not subject to forfeiture which represent part of the rental receipts are considered part of the taxable services and are subject to tax. Such deposits may include a deposit of the first rental payment which is applied to the rental receipts.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—26.19(422) Excavating and grading. Persons engaged in the business of excavating and grading for purposes other than new construction, reconstruction, alteration, expansion or remodeling are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.19(1) For purposes of this rule, “*excavation*” shall mean the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. The word excavate ordinarily comprehends not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface. *Rochez Brothers v. Duricka*, 374 Pa. 262, 97 A.2d 825 (1953).

26.19(2) “*Grading*” shall mean, in its commonly accepted sense, a physical change of the earth’s structure by scraping and filling in the surface to reduce it to a common level; the reducing of the surface of the earth to a given line fixed as the grade, involving excavating or filling or both.

When it is determined that the enumerated service of excavating or grading is present, the situation must be further examined to determine if the new construction exemption applies. See chapter 248(9), Acts of the Sixty-third General Assembly.

701—26.20(422) Farm implement repair of all kinds. Persons engaged in the business of repairing, restoring or renovating implements, tools, machines, vehicles or equipment, but not including installation of new parts or accessories which are not replacements, used in the operation of farms, ranches or acreages on which growing crops of all kinds, livestock, poultry or fur-bearing animals are raised or used for any purpose are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.21(422) Flying service. Persons engaged in the business of teaching a course of instruction in the art of operation and flying of an airplane, and instructions in repairing, renovating, reconditioning an

airplane, or any other related service are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. While not intended to be inclusive, the following is a list of taxable and nontaxable charges related to flight instruction.

Charges for instructors' services, ground instruction and ground school are taxable.

Charges for dual flying and for students learning to fly with an instructor are taxable. The instruction is taxable as a flying service. The plane rental is also taxable. This paragraph shall become effective for periods beginning on or after April 1, 1992.

Flying service shall also include all other types of flying service, except agricultural aerial application services, aerial commercial and chartered transportation services and those services exempt by 26.2(3).

This rule is intended to implement Iowa Code section 422.43.

701—26.22(422) Furniture, rug, upholstery, repair and cleaning. Persons engaged in the business of repairing, restoring, renovating or cleaning furniture, rugs or upholstery are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Wherever used, "furniture" shall include all indoor and outdoor furnishings. "Rugs" shall include all types of rugs and carpeting. "Upholstery" shall include all materials used to stuff or cover any piece of furniture.

701—26.23(422) Fur storage and repair. Persons engaged in the business of storing for preservation and future use, refurbishing, repairing and renovating, including addition of new skins and furs, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The term "furs" shall include both natural and manufactured simulated products resembling furs.

701—26.24(422) Golf and country clubs and all commercial recreation. All fees, dues or charges paid to golf and country clubs are subject to tax. "Country clubs" shall include all clubs or clubhouses providing golf and other athletic sports for members. Persons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Recreation" shall include all activities pursued for pleasure, including sports, games and activities which promote physical fitness, but shall not include admissions otherwise taxed under Iowa Code section 422.43.

Dance schools are the only schools the services of which are taxable under Iowa Code subsection 422.43(9). See rule 701—26.14(422) on dance schools and dance studios. The gross receipts from any school providing training services in any activity pursued for pleasure or recreation shall not be subject to tax, unless the school is a dance school.

If a person provides both facilities for recreation and instruction in recreational activities, charges for instruction in the recreational activities shall not be subject to tax if all of the following circumstances exist:

1. The instruction charges are contracted for separately, separately billed, and reasonable in amount when compared to the taxable charges of providing facilities for recreation.

EXAMPLE: An ice skating rink offers three membership plans. The first membership plan provides only instruction in the activity of ice skating. The second plan allows for the use of the rink's facilities, but provides for no instruction in ice skating. The third plan allows the customer to participate in a certain number of ice skating classes and also allows use of the rink's facilities without instruction. Customer charges for the first plan would not be subject to tax. Customer charges for the second plan would be subject to tax. Charges for the third plan would be subject to tax if billed in one lump-sum. If, under the third plan, charges to the customer for instruction and use are separately stated, and the charges for instruction are not unreasonable, the charges for instruction shall be exempt from tax. If it is necessary to pay for instruction to secure use of the facilities for recreation, charges for the instruction are a part of the gross receipts from commercial recreation and shall be subject to tax.

2. The persons receiving the instruction must be under the guidance and direction of a person training them in how to perform the recreational activity. If the persons receiving what purports to be "instruction" are allowed any substantial amount of time to pursue recreational activities, no instruction is taking place. The instruction should be received in what would ordinarily be thought of as a "class" with a fixed time

and place for meeting. The instruction need not be received in what would ordinarily be thought of as a “classroom,” but the instructor and the persons receiving instruction should be segregated from persons engaging in recreational activity insofar as this is possible. Instruction may still occur if complete or partial segregation is impossible.

EXAMPLE: A golf pro offers instruction to students on a golf course. The students cannot circulate around the golf course in a group with the golf pro because this would slow the play of golfers following such a group and lead to complaints. The students circulate on the course individually, and the golf pro observes the play of each student and comments upon it. Even though no segregation of the individual students into any sort of a class is possible, the students are receiving instruction from the golf pro and, therefore, no taxable event occurs.

EXAMPLE: A retailer maintains a golf driving range. There are separate tee-off positions for each customer to practice driving golf balls. There is also an instructor in driving present. The instructor cannot reserve individual tee-off positions for instruction of students because the positions are filled on a first-come-first-served basis. When students come for instruction, the instructor must make use of whatever tee-off positions are available. Even though segregation of students from other customers is impossible, instruction exists and, therefore, no taxable event occurs.

3. The “instruction” must impart to the learner a level of knowledge or skill in the recreational activity which would not be known to the ordinary person engaging in the recreational activity without instruction. Also, the person providing the instruction must have received some special training in the recreational activity taught if charges for that person’s instruction are to be exempt from tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.25(422) House and building moving. Persons engaged in the business of moving houses or buildings from one location to another, whether for repair or otherwise, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Charges for house and building moving are not considered transportation charges, and are, therefore, subject to the imposition of sales tax.

This rule is intended to implement Iowa Code section 422.43.

701—26.26(422) Household appliance, television and radio repair. Persons engaged in the business of repairing household appliances, television sets, or radio sets, but not including installation of new parts or accessories which are not replacements, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Repair” shall include mending or renovation of existing parts of such household appliances, television sets and radio sets, as well as replacing defective parts of such articles. “Household appliances” shall include all mechanical devices normally used in the home, whether or not used therein.

701—26.27(422) Jewelry and watch repair. Persons engaged in the business of repairing jewelry or watches are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Jewelry or watch repair” shall include any type of mending, restoration or renovation of parts, or replacement of defective parts.

701—26.28(422) Machine operators. Persons engaged in the business of operating machines of all kinds, belonging to other persons, where a fee is charged, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Machine operator” is a person who exercises the privilege of managing, controlling and conducting a mechanical device or a combination of mechanical powers and devices used to perform some function and produce a certain effect or result. For example, the operation of the following machines is a taxable service: typewriters, manufacturing machinery and equipment, computers, calculators, and cash registers. This list is not all-inclusive. Telephones, automobiles and airplanes are not machines for the purpose of this rule, and the operation of these items is not the taxable service of a machine operator.

The service of machine operator is not subject to tax when performed by an employee directly for that employee's employer. In addition, to be taxable as machine operation, the operation of the machine must be the primary service that is being performed and not just incidental to the performance of the primary service being rendered.

Below are examples regarding the service of "machine operator":

EXAMPLE 1. Employee 1 is hired to perform data entry work on a computer for the employer. The services of employee 1 are that of machine operator, but are not subject to tax because employee 1 is performing the services directly for the employer.

EXAMPLE 2. ABC Company hires a person from a temporary employment agency to perform data entry work on a computer. ABC Company pays a set per-hour fee for the services of the data entry person. The service performed by the person is that of a machine operator. ABC Company must pay sales or use tax on the fee imposed by the temporary employment agency.

EXAMPLE 3. ABC Company hires telemarketing personnel from a temporary employment agency for sales calls during the holiday season. ABC Company does not owe tax on the fee charged by the temporary employment agency. The services of a telemarketer would not be taxable as those of a machine operator since the telephone is not a machine for the purpose of this rule.

This rule is intended to implement Iowa Code section 422.43.

701—26.29(422) Machine repair of all kinds. Persons engaged in the business of repairing machines of all kinds are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Machine" shall include all devices having moving parts and operated by hand, powered by a motor, engine, or other form of energy. It is a mechanical device or combination of mechanical powers and devices used to perform some function and produce a certain effect or result. A musical instrument does not constitute a machine and therefore, musical instrument repairs are not subject to tax.

701—26.30(422) Motor repair. Persons engaged in the business of repairing motors powered by any means whatsoever are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending or renovation of parts, replacements of defective parts or subassemblies of the motor, but shall not include installation of new parts or accessories which are not replacements.

701—26.31(422) Motorcycle, scooter and bicycle repair. Persons engaged in the business of repairing motorcycles, scooters and bicycles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending or renovation of parts, replacement of defective parts or subassemblies, but shall not include installation of new parts or accessories which are not replacements.

701—26.32(422) Oilers and lubricators. Persons engaged in the business of oiling, changing oils or lubricating and greasing vehicles and machines of all types having moving parts or powered by a motor or engine or other form of energy, heavy equipment vehicles or implements, whether such equipment functions in a state of rest or in a state of motion, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.33(422) Office and business machine repair. Persons engaged in the business of repairing office and business machines are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending and renovation of existing parts, replacement of defective parts or subassemblies, but shall not include installation of new parts or accessories which are not replacements.

701—26.34(422) Painting, papering and interior decorating. Persons engaged in the business of painting, papering and interior decorating are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Painting" shall mean covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant,

with some suitable liquid to form a solid adherent when spread on in thin coats for decoration, protection or preservation purposes and all necessary preparations thereto, including surface preparation. The following are not within the definition of painting: automobile undercoating, the coating of railroad cars, storage tanks, or the plating of tangible personal property with metals such as but not limited to chromium, bronze, tin, galvanized metal, or platinum. "Papering" shall mean applying wallpaper or wall fabric to the interior of houses or buildings and all necessary preparations thereto including surface preparation. "Interior decoration" shall mean the service of designing or decorating the interiors of houses or buildings, counseling with respect to such designing or decoration or the procurement of furniture fixtures or home or building decorations. When any person provides interior decorating service without charge as an incident to the sale of real or personal property, no sales tax, in addition to that paid on the purchase price or any part thereof of the personal property, shall be charged.

This rule is intended to implement Iowa Code section 422.43.

701—26.35(422) Parking facilities. Persons engaged in the business of operating a parking facility for a fee are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For the purpose of this rule, a "parking facility" is any place that is built, installed or established for the purpose of parking a vehicle for a fixed interval. It is irrelevant whether the charge is by the hour, day, month or any other period of time.

This rule is intended to implement Iowa Code section 422.43.

701—26.36(422) Pipe fitting and plumbing. Persons engaged in the business of pipe fitting and plumbing are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Pipe fitting and plumbing" shall mean the trade of fitting, threading, installing and repairing of pipes, fixtures or apparatus used for heating, refrigerating, air conditioning or concerned with the introduction, distribution and disposal of a natural or artificial substance.

701—26.37(422) Wood preparation. Persons engaged in the business of wood preparation or treatment for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Wood preparation" shall include all processes whereby wood is sawed from logs into measured dimensions, planed, sanded, oiled or treated in any manner before being used to repair an existing structure or create a new structure or part thereof. But where such preparation is engaged in solely for the purpose of processing lumber or wood products for ultimate sale at retail, such "preparation" may not be deemed as rendering, furnishing or performing a service, the gross receipts from which would be subject to tax.

701—26.38(422) Private employment agency, executive search agency. Private employment agencies engaged in the business of providing listings of available employment, counseling others with respect to future employment or aiding another in any way to procure employment are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The aforementioned services are subject to tax, regardless of whether they are rendered for the prospective employee or prospective employer.

For periods commencing after June 30, 1982, the gross receipts of private employment agencies from services rendered for placing a person in employment where the person's principal place of employment is to be located outside the state of Iowa are not taxable. Principal place of employment ordinarily means the work location of the employee.

EXAMPLE: ABC Company contracts with XYZ, an Iowa employment agency, to secure an employee to work at a production plant in Illinois. XYZ Employment Agency finds a suitable employee that is hired by ABC Company. Since the employee's principal place of employment is outside the state, there is no tax due on the gross receipts of XYZ Employment Agency for securing that employment.

EXAMPLE: Hometown Sales Company contracts with ABC Employment Agency to secure a salesperson to travel Iowa, Missouri and Nebraska. Both Hometown Sales Company and ABC Employment Agency are located in Iowa. ABC Employment Agency is successful in finding a

salesperson for Hometown Sales Company. Since this salesperson will be traveling in three states the gross receipts of ABC Employment Agency from placing the employment of this salesperson are taxable as the principal place of the salesperson's employment is not outside the state of Iowa.

Executive search agencies are engaged in the business of securing employment for top-level management positions. Effective July 1, 1984, the gross receipts from services provided by executive search agencies are subject to tax. For any period prior to that date, their gross receipts are not taxable. Prior to July 1, 2002, it was necessary for an executive search agency to be "licensed" for its services to be taxable. On and after that date, the services of an unlicensed executive search agency are taxable. The exclusion from taxation for the service of placing a person in employment if that person's principal place of employment is to be located outside of Iowa which is applicable to private employment agencies is not applicable to executive search agencies. The gross receipts from the services of executive search agencies performed in Iowa are subject to tax.

The following nonexclusive elements distinguish the difference between executive search agencies and private employment agencies. These elements should be used to distinguish between taxable and nontaxable services for any period prior to July 1, 1984.

Executive Search Firm	Employment Agency
1. Top level management positions— Salaries over \$30,000.	All levels of jobs in an organization. All salary levels.
2. Serve only a few clients (5 or 6) at one time. Employers only.	Large number of clients at all times. Both possible employers and employees.
3. Send information regarding one individual to one possible employer only. Résumés never circulated to other possible employers.	Individual's résumé circulated to many possible employers.
4. Extensive analysis of the position to be filled. Extensive analysis of the individuals who are candidates. Prepare detailed professional assessment of strengths and weaknesses of individuals.	No extensive analysis of the position or the individual.
5. Make travel arrangements for interviews; conduct salary negotiations; perform follow-up studies.	Normally does not make travel arrangements for interviews; does not conduct salary negotiations; does not perform detailed follow-up studies.
6. Only paid by the company seeking the employee.	Paid by either the company or the job seeker.
7. Paid on retainer or by an hourly charge or by contract. Paid whether or not individual is hired.	Paid on a contingent-fee basis. Paid only if a referred person is hired.
8. Does not advertise available positions.	Does engage in general advertising of available positions.
9. Overall placement of individual requires extensive and sophisticated analysis of position and individual.	Overall placement of individual is not as extensive or sophisticated.

This rule is intended to implement Iowa Code section 422.43 as amended by 2002 Iowa Acts, Senate File 2305, section 6.

701—26.39(422) Printing and binding. Prior to July 1, 1984, persons engaged in the business of printing or binding any printed matter other than for the purpose of ultimate sale at retail are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Printing" shall include any type of printing, lithographing, mimeographing, photocopying, and similar reproduction. The following activities are representative of services, the gross receipts from which are subject to tax: the printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts,

law briefs, business cards, matchbook covers, campaign posters, and banners for the users thereof. For the treatment of printing and binding on and after July 1, 1984, see rule 701—16.51(422,423).

701—26.40(422) Sewing and stitching. Persons engaged in the business of sewing and stitching are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.41(422) Shoe repair and shoeshine. Persons engaged in the business of repairing or shining any type of footwear, such as shoes, boots and sandals, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Repair” shall include the mending or renovation of existing parts and the replacement of defective parts, but shall not include installation of new parts or accessories which are not replacements of the footwear in any manner. “Shoeshine service” is meant to be the shining of any type of footwear.

701—26.42(422) Storage warehousing, storage locker, and storage warehousing of raw agricultural products and household goods.

26.42(1) Definitions.

a. For the purpose of this rule, raw agricultural products include, but are not limited to, corn, beans, oats, milo, fruits, vegetables, animal semen, and like items that have not been subjected to any type of processing. Grain drying is not processing.

b. A “warehouse” is defined as an enclosure not readily accessible to the public, which would normally require a roof of some sort or some type of structure designed to afford protection to the products. Placing the products on the ground, even though surrounded by a fence, would not constitute a warehouse. *Lynch v. State*, 1889, 89 Ala. 7 So. 829.

c. “Household goods” means tangible personal property located in a person’s residence, and is not inventory.

d. For the purpose of this rule, the term “principal” shall refer to the person who ships raw agricultural products or household goods to the warehouse, or the person who is billed by the warehouse for service performed. The term “purchaser” shall refer to the person who purchases the goods from the principal.

26.42(2) Taxation of household goods. Beginning April 1, 1992, the gross receipts on the storage of household goods in a warehouse are subject to tax.

a. For the purposes of this rule, storage in transit (S.I.T. storage), consists of household goods stored for less than 180 days. Permanent storage consists of household goods stored for 180 days or more.

b. Storage in transit with an origin in Iowa and a destination outside Iowa is exempt from tax.

c. Storage in transit with an origin outside the state of Iowa and a destination in Iowa is subject to tax.

d. Storage in transit with an origin and destination within Iowa is subject to tax.

26.42(3) Storage and delivery.

a. *Raw agricultural products or household goods originating inside the state and delivered inside the state.* Assuming the raw agricultural products or household goods originate in Iowa, are stored in an Iowa warehouse and, after storage, are delivered to a destination in Iowa, the tax is imposed on storage pursuant to Iowa Code section 422.43. The interstate commerce exemption in Iowa Code section 422.42, subsections 13 and 16, is not applicable.

b. *Raw agricultural products or household goods originating outside the state and delivered inside the state.* Assuming the raw agricultural products or household goods originate from a principal outside the state of Iowa, are sent to an Iowa warehouse and, after storage, are delivered to a destination in Iowa; tax on these warehouse services has been imposed since October 1, 1967, and there is no interstate commerce exemption, either under the United States Constitution, or under the statutory exemption for services performed on tangible personal property delivered into interstate commerce. The delivery, in this example, is clearly intrastate and the storage is subject to tax. *Iowa Movers and Warehousemen’s Association v. Briggs*, 237 N.W.2d 759 (Iowa 1976).

c. Raw agricultural products or household goods originating inside or outside of the state and shipped by the warehouse out of Iowa. Assuming the raw agricultural products or household goods originated either in Iowa or outside of Iowa, are shipped to an Iowa warehouse and, after storage, are sent by the warehouse directly out of Iowa or are given to a common carrier to be shipped out of Iowa, with destination being out of Iowa; the storage of the raw agricultural products or household goods is exempt.

d. Raw agricultural products or household goods originating either inside the state or outside the state and the principal or purchaser of the raw agricultural products picks them up at the Iowa warehouse. Assuming the raw agricultural products or household goods originated either in Iowa or out of Iowa, and are sent to an Iowa warehouse for storage and, upon the completion of the storage, the principal directs the warehouse to allow the purchaser of the raw agricultural products or household goods to pick them up at the Iowa warehouse; the warehouse service would be subject to Iowa sales tax.

This example involves a situation similar to the one found in *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968).

In that case, the court held that where the sale of goods is made by an Iowa principal, delivery of the goods physically made to the purchaser in Iowa constitutes an intrastate delivery, and the Iowa sales tax applies. Therefore, where physical delivery of goods in the form of transfer of possession is made from the Iowa warehouse directly to the principal or the purchaser, such direct delivery constitutes a delivery into intrastate commerce and the warehouse services performed on these goods would be subject to Iowa sales tax.

26.42(4) Other charges invoiced separately.

a. Transportation. The gross receipts from the sale, furnishing, or service of transportation services are exempt from the Iowa sales and use taxes under Iowa Code subsection 422.45(2). This would include delivery charges which are itemized or shown separately on the customer's invoice.

b. Handling. A charge assessed for labor and equipment used to unload rail cars, trucks, or other vehicles, place the raw agricultural products or household goods in storage and remove from storage and load rail cars, trucks, or other vehicles. Handling charges billed after October 1, 1967, are exempt as transportation charges if they are itemized or shown separately on the customer's invoice. If handling charges are not ascertainable on the invoice, the total amount thereon is deemed to be storage and, therefore, taxable.

c. Clerical. A charge assessed for special services such as, but not limited to, compiling stock reports and statements, reporting serial numbers, physical checking of raw agricultural products, and reporting by special report of receipt transactions and shipments. If such charges are predominantly related to storage, they are subject to tax. If clerical charges are predominantly related to transportation activities, they are exempt from tax.

d. Communications. A charge assessed for postage, telephone, teletype, or telegram, and for other than normal communication at the request of the customer. If such charges are predominantly related to storage, they are subject to tax. If communication charges are predominantly related to transportation activities, they are exempt from tax.

e. Car cleaning. A charge assessed for cleaning rail cars of bracing and debris as required by the Interstate Commerce Commission. This is related to transportation activities and not subject to tax.

f. Recouping. A charge assessed for handling merchandise damaged in transit so as to prevent further loss due to transit damage. This is predominantly a charge for storage and is subject to tax unless it can be shown that it is predominantly related to transportation.

g. Dunnage and bracing. A charge assessed for labor and material used in blocking and bracing in rail cars and trucks; blocking and bracing are necessary to protect or prevent movement of raw agricultural products or household goods while in transit. This charge is separate from the storage charge and is related to transportation. Therefore, it is not subject to tax.

h. Extra labor. A charge assessed for other-than-normal handling, such as shipping or receiving, during other-than-usual business hours. This charge is predominantly related to transportation and, when separately listed from storage, is not subject to tax.

i. Bonded custom charges. A charge assessed in addition to regular rates for merchandise being held under United States Custom Bond. This is considered a tariff on foreign goods entering the country and is not subject to tax.

j. Trash disposal. See rule 701—26.71(422,423).

k. Cartage. A charge assessed for transporting raw agricultural products or household goods from the storage facility to the customer's place of business or residence, or from the customer's place of business or residence to the storage facility, or from one place of business to another, or from one residence to another. This is a transportation charge and is not subject to tax.

l. Crating. This is a charge for packing and wrapping. If predominantly related to storage, it is taxable; if it is predominantly related to transportation, it is exempt.

m. Canning and bagging. A charge assessed for receiving raw agricultural products or household goods in bulk, unloading, and placing in containers, such as bottles, bags, cans, or drums. If this service is predominantly related to storage, it is subject to tax. If this service is predominantly related to transportation, it is exempt from tax.

n. Unpacking. This would be predominantly related to storage and subject to tax, unless it can be shown to be predominantly related to transportation.

26.42(5) Wrapping and packaging.

a. Wrapping and packaging services performed on raw agricultural products or household goods are taxable or exempt, depending upon whether the predominant service is storage or transportation. *Iowa Movers and Warehousemen's Association* supra.

b. Wrapping, packing and packaging predominantly for storage of merchandise is subject to tax unless the interstate commerce exemption is applicable.

c. Warehouses which sell packing materials to their customers are considered retailers of these materials and should collect sales tax. When the packaging materials are not billed separately to the customer, the warehouse will be subject to the standards set forth in rule 701—18.31(422,423) regarding tangible personal property purchased for use in performing services.

26.42(6) Transit warehouses. The department recognizes that the operations of transit warehouses present some administrative difficulties in the collection of sales taxes. Raw agricultural products or household goods are shipped to transit warehouses in bulk quantities and shipped to different locations at different times. Storage of raw agricultural products or household goods delivered in Iowa would be subject to tax, while storage of raw agricultural products or household goods placed into interstate commerce would be exempt from tax. Since it is extremely difficult under these circumstances to determine the cost of storage on raw agricultural products or household goods delivered in Iowa, the department will allow transit warehouses to compute tax on storage fees on the basis of a formula, the numerator of which is the quantity of raw agricultural products or household goods stored in the warehouse with intrastate delivery in Iowa, and the denominator of which is the total quantity of goods stored in the warehouse. This information, in most cases, must be supplied by principals storing goods in the warehouse. However, it is the responsibility of the warehouse to acquire the information needed to compute the Iowa sales tax under the formula. This information should be verified with the principal at least once every 90 days. Included in the numerator of the formula will be raw agricultural products or household goods picked up at an Iowa warehouse by a principal or purchaser, or raw agricultural products or household goods delivered to a principal or purchaser in Iowa even though the principal or purchaser may subsequently deliver the raw agricultural products or household goods to a common carrier for shipment outside Iowa.

26.42(7) Government storage. Storage of raw agricultural products or household goods is exempt from tax if the storage contract is with a tax-certifying or tax-levying body of the state of Iowa or to any instrumentality of the state, county, or municipal government, or with the federal government or its instrumentalities. Storage fees relating to raw agricultural products or household goods placed in storage by the producer and later consigned to the federal government under a loan agreement are not exempt from tax. In order for the storage to be exempt from tax, the federal government must actually own the raw agricultural products or household goods during the period the goods are stored and make payment to the warehouse for the storage.

Also refer to *Iowa Movers and Warehousemen's Association v. Briggs*, Equity No. 75910, Polk County District Court, May 8, 1974, and 237 N.W.2d 759.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—26.43(422,423) Telephone answering service. Persons engaged in the business of providing telephone answering service, whether by person or machine, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

This rule is intended to implement Iowa Code section 422.43(11).
[ARC 9814B, IAB 10/19/11, effective 11/23/11]

701—26.44(422) Test laboratories. Persons engaged in the business of providing laboratory testing of any substance for any experimental, scientific or commercial purpose, except for tests on humans, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Included within the meaning of the phrase “test laboratories” are mobile testing laboratories and field testing by test laboratories. Test laboratory services performed on animals on or after July 1, 1991, are also exempt from tax.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

¹**701—26.45(422) Termite, bug, roach, and pest eradicators.** Persons engaged in the business of eradicating or preventing the infestation by termites, bugs, roaches, and all other living pests are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. Persons who eradicate, prevent, or control the infestation of any type of pest by spraying or other means are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. Included in the performance of this taxable service are persons who eradicate, prevent, or control pest infestations in farmhouses, in outbuildings (such as machine and livestock buildings) and in other structures (such as grain bins) used in agricultural production. However, persons who spray cropland used in agricultural production to eradicate or prevent infestation of the cropland by pests are performing a service which is not taxable. See 701—subrule 17.9(3) for a definition of “agricultural production.”

¹ Effective date (7/8/98) delayed until July 16, 1998, by the Administrative Rules Review Committee at its meeting held June 9, 1998.

701—26.46(422) Tin and sheet metal repair. Persons engaged in the business of repairing tin or sheet metal, whether the same has or has not been formed into a finished product are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.47(422) Turkish baths, massage, and reducing salons. Persons engaged in the business of operating Turkish baths, reducing salons, or in the business of massaging, excluding services provided by massage therapists licensed under Iowa Code chapter 152C, are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. “Turkish baths” shall mean any type of facility wherein the individual is warmed by steam or dry heat. “Reducing salons” shall mean any type of establishment which offers facilities or a program of activities for the purpose of weight reduction. “Massaging” shall include the kneading, rubbing, or manipulating of the body to condition the body, but not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts. Persons engaged in the business of operating health studios which, as a part of their operation, offer any or all of the services of Turkish baths, massages, or reducing facilities or programs shall be subject to tax upon the gross receipts from the above-named service.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1998 Iowa Acts, chapter 1163.

701—26.48(422) Vulcanizing, recapping or retreading. Prior to May 18, 1984, persons engaged in the business of recapping or retreading tires for any vehicle or vulcanizing any type of product for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For the

purposes of this rule, vulcanizing shall mean the act or process of treating crude rubbers, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity. On and after May 18, 1984, the sale of vulcanizing, recapping or retreading is treated as a sale of tangible personal property. See rule 701—16.51(422,423) for the effects of this change and for certain changes in the treatment of vulcanizing, recapping or retreading for the period beginning January 1, 1979, and ending May 17, 1984.

701—26.49 Rescinded, effective 3/18/87.

701—26.50(422) Weighing. Persons engaged in the business of weighing any item of tangible personal property are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.51(422) Welding. Persons engaged in the business of welding materials whether for the purpose of mending existing articles, adding to them or creating new articles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.52(422) Well drilling. Persons engaged in the business of well drilling who perform repair services are rendering a service, the gross receipts from which are subject to tax. Services within the ambit of subrule 26.2(1) are not subject to tax.

701—26.53(422) Wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables. Persons engaged in the business of wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. If the person “wraps, packs or packages” merchandise as a service incidental to the sale of such merchandise and does not charge for the service, no sales or use tax, in addition to that paid on the purchase price of the merchandise, need be collected or remitted. However, if a separate charge be made for “wrapping, packing or packaging,” the gross receipts therefrom are subject to tax.

701—26.54(422) Wrecking service. Persons engaged in the business of wrecking, tearing down, defacing or demolishing tangible personal or real property or any parts thereof are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.55(422) Wrecker and towing. Persons engaged in the business of towing any vehicle by means of pushing, pulling, carrying or freeing any vehicle from mud, snow or any other impediment, including hoisting incidental thereto, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The gross receipts from service charges made when any person travels to any place to lift, extricate or tow any vehicle or to salvage any vehicle are subject to tax. Towing does not include transporting operable vehicles from one location to another where no operative aspect of such vehicle is integral to such transporting. The exemption for transportation services shall not apply.

26.55(1) “*Vehicle*” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. “*Vehicle*” does not include:

- a. Any device moved by human power.
- b. Any device used exclusively upon stationary rails or tracks.
- c. Any steering axle, dolly, or other integral part of another vehicle, except an auxiliary axle as defined in 26.55(2) which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.
- d. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.

26.55(2) “*Auxiliary axle*” means a transferable axle with pneumatic tires utilized to convert any single axle to a tandem axle, or to convert any semitrailer to a full trailer with four or more wheels and which may be registered as if a vehicle.

This rule is intended to implement Iowa Code sections 422.43 and 423.1(7).

701—26.56(422) Cable and pay television. On and after July 1, 1990, persons engaged in the business of distributing the signals of one or more television broadcasting stations, or other television programming to subscribers, and using any transmission path, including a cable, for these signals are rendering the service of “pay television,” the gross receipts of which are subject to tax. Thus, the gross receipts from a service broadcasting signals from a satellite directly to a customer’s “satellite dish” or other receiving antenna would be taxable. Also taxable as the gross receipts from a “pay television service” would be the rental of any device used for decoding scrambled signals received from a communications satellite.

On and after July 1, 1985, and prior to July 1, 1990, the service of “cable television” only, rather than “pay television” was subject to tax. Thus, only if television programming was transmitted to subscribers by means of a cable during this five-year period were the gross receipts of that service subject to tax. A cable television service would include any facility using fiber optics as a transmission path for its distribution of signals to its customers. Prior to July 1, 1990, the gross receipts of a company broadcasting signals from a satellite directly to a customer’s “satellite dish” or other receiving antenna would not be subject to tax as the service of “cable television”; however, such a system could be a taxable “communication service.” See rule 701—18.20(422). The gross receipts from the installation of cable television service, separately itemized and billed, are not subject to tax.

The following television services are taxable, in any event, on and after July 1, 1990. These services are also taxable on and after July 1, 1985, if transmitted to viewers by way of a cable: the gross receipts from payments to view single events, as well as subscription payments are subject to tax. Also subject to tax are the gross receipts from any television service serving fewer than 50 subscribers or serving only customers in one or more multiple unit dwellings under common ownership, control, or management. Any person distributing signals to television screens in auditoriums or other buildings which show boxing matches and other events for viewing by a paying audience is in the business of providing a television service. Gross receipts from providing these signals to exhibitors of boxing matches or other events are subject to tax.

See 701—subrule 18.5(3) and rule 701—18.39(422,423) for a description of the special circumstance regarding taxation and nontaxation of municipally owned pay television service.

See rule 701—18.43(422,423) for an exemption applicable to cable television only for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.57(422) Camera repair. The gross receipts from repair of any still photograph, motion picture, video, or television camera are subject to tax. Included within the term “camera repair” is the repair of any camera part which may be detached from the camera body but which can be used only with a camera and would ordinarily be considered a part of the camera. Nonexclusive examples of such accessories are: detachable lenses, flash units and motor drives.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.58(422) Campgrounds. On and after July 1, 1985, the gross receipts from “campgrounds” are subject to tax. A “campground” is any location at which sites are provided for persons to place their own temporary shelter, such as a tent, travel trailer or motor home. Excluded from this characterization of “campground” is any hunting, fishing or other type of camp at which accommodations are provided in cabins or other permanent structures. The gross receipts from the operation of these camps were taxable prior to July 1, 1985, and remain taxable after that date. See rule 701—18.40(422,423). The gross receipts from the use of a site at a campground are subject to tax even if rented by the same person for a period of more than 31 consecutive days.

Included within the meaning of “gross receipts” from the services of a campground are any mandatory or optional charges imposed on persons using a site on the campground. These include, but are not limited to, campground entry fees, electric, water and sewer fees, fees for the use of swimming pools or showers, and fees for the privilege of keeping extra persons or extra vehicles at the campsite. The gross receipts from the use of any state park as a campground are subject to tax. The gross receipts from the use of any county or municipal park as a campground are exempt from tax.

Excluded from this characterization of the gross receipts from a campground are any charges to persons who are not residing on a site at the campground and who are, therefore, not camping there. Charges to such persons for the use of picnic areas, swimming pools, hiking trails or hayrides are not the gross receipts from a campground, but are the gross receipts from “commercial recreation” which are subject to tax and were subject to tax prior to July 1, 1985. See rule 701—26.24(422). Fees charged which allow entry for a vehicle to any state, county or municipal park (commonly called “park user fees”) shall not be subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 423.43(11).

701—26.59(422) Gun repair. On and after July 1, 1985, the gross receipts from “gun repair” are subject to tax. The term “gun repair” means the repair of any pistol, revolver or other hand gun, as well as the repair of any shoulder or hip-fired gun such as a rifle or shotgun. See *State v. Christ*, 177 N.W. 54 (Iowa 1920).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.60(422) Janitorial and building maintenance or cleaning. On and after July 1, 1985, gross receipts from janitorial services and building maintenance and cleaning are subject to tax. “Janitorial services” means the type of cleaning services performed by a janitor in the regular course of duty, whether such services are performed individually, under separate contract, or are included within a general contract to perform a combination of such services. The term includes, but is not limited to, contracts to perform interior window washing, floor cleaning, vacuuming and waxing, the cleaning of interior walls and woodwork, and cleaning of restrooms and furnaces. Also included within the meaning of the term is the movement of furniture and other items of personal property within a building. Persons performing either one or a number of janitorial services are engaged in a business, the gross receipts of which are subject to tax. Therefore, for example, a person engaged only in cleaning the interior windows of a building is engaged in taxable janitorial services.

The gross receipts from services which would otherwise be considered “janitorial” services are not subject to tax if those services are performed in a private residence, including an apartment or multiple housing unit, and the person paying for the services is an occupant of the residence. Such services are more in the nature of “housekeeping” than “janitorial” services and are not taxable.

Cleaning of the exterior walls or windows of any building or any other act performed upon the exterior of a building with the intent to keep the building in good upkeep or condition, other than a repair, is the service of “building maintenance.” Its gross receipts are subject to tax. Excluded from “building maintenance” is any service performed upon the exterior of a building which is a private residence and which is paid for by an occupant of the building.

Janitorial services or building maintenance performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of structure is exempt from tax. See rule 701—19.13(422,423).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.61(422) Lawn care. On or after July 1, 1985, persons engaged in the business of “lawn care” are performing a service, the gross receipts of which are subject to tax. “Lawn care” includes but is not limited to the following services: mowing, trimming, watering, fertilizing, reseeding, resodding, and

killing of insects, moles, other vermin, weeds, or fungi which may be threatening a lawn. Persons who mow lawns are providing a taxable service regardless of their ages.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

The term “lawn” is commonly defined as an “open space between woods or ground (as around a house or in a garden or park) that is covered with grass and is generally kept mowed” or required to be kept mowed. (Webster’s New Collegiate Dictionary (1979).) Based on this general definition of “lawn,” the following are nonexclusive examples of properties which would be subject to tax as “lawn care”: cemetery grounds, golf courses, parks, and residential or commercial properties containing one or more buildings or structures. The mowing of grass within a ditch is not the taxable service of lawn care.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.62(422) Landscaping. On or after July 1, 1985, the gross receipts from the service of “landscaping” are subject to tax. The services performed by one who arranges and modifies the natural condition of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment is engaged in the business of “landscaping.” Any services for which registration is required as a “landscape architect” under Iowa Code section 544B.2 are not subject to tax on the service of “landscaping” if performed by a registered landscape architect and separately stated and separately billed on a charge for landscape architecture. The gross receipts from landscaping performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure shall not be subject to tax. See rule 701—19.13(422,423).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.63(422) Pet grooming. On or after July 1, 1985, persons engaged in the business of pet grooming are rendering a service, the gross receipts of which are subject to tax. A “pet” is any animal which has been tamed or gentled and which is kept by its owner for pleasure or affection rather than for utility or profit. “Grooming” consists of any act performed to maintain or improve the appearance of a pet and includes, but is not limited to, washing, combing, currying, hair cutting and nail clipping. Livestock are not pets, and the gross receipts from the grooming of livestock (e.g., to prepare those livestock for exhibition at fairs or shows) are nontaxable gross receipts. The gross receipts paid to any person who is not a veterinarian for the grooming of any dog (other than a Seeing Eye dog) or cat will be presumed to be the gross receipts from “pet grooming” and subject to tax.

If pet grooming is done for veterinary purposes, the sales tax does not apply since the grooming is an integral part of the nontaxable service of veterinary care. If pet grooming is done for both veterinary and cosmetic reasons, the primary purpose for the treatment will determine if sales tax should be collected. In situations where the charge for the cosmetic treatment and the veterinary-related treatment can be invoiced separately, sales tax should be collected only on the cosmetic portion of the billing. It will be presumed that pet grooming activities such as washing, trimming, and cutting are for cosmetic purposes unless it can be shown that the treatment was primarily done for veterinary purposes.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.64(422) Reflexology. On and after July 1, 1985, persons engaged in the business of reflexology are rendering a service, the gross receipts of which are subject to tax. “Reflexology” is a system for the treatment of illness which assumes that certain “reflex points” exist in the feet or hands and that each of these reflex points is related to the health of one organ or portion of the body. By massaging these reflex points, a “reflexologist” seeks to alleviate nervous tension, and by this alleviation to relieve arthritis, headaches, backaches, stiff necks and other ailments.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.65(422) Tanning beds and tanning salons. On or after July 1, 1985, persons engaged in the business of providing tanning beds and tanning salons are performing a service, the gross receipts of which are subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.66(422) Tree trimming and removal. On or after July 1, 1985, persons engaged in the business of tree trimming and removal are performing a service, the gross receipts of which are subject to tax. Persons engaged in “stump removal” are engaged in a taxable service, as are persons engaged in the removal of any other portion of a tree, such as the branches or trunk. The trimming or removal of any shrub which has a woody main stem or trunk with branches shall constitute tree trimming or removal and the gross receipts from the trimming or removal of such a shrub shall be subject to tax. Persons engaged in the business of tree trimming and removal who cut the wood from the trees which they trim or remove into sizes suitable for sale as firewood and who sell this wood for firewood are engaged in the sale of tangible personal property, and the gross receipts from the sale of this wood are subject to tax. The services of persons who trim or remove trees and sell the wood which they have cut are not services sold for resale and are subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.67(422) Water conditioning and softening. On and after July 1, 1985, persons engaged in the business of water conditioning and softening are performing a service, the gross receipts of which are subject to tax. “Water softening” means the removal of minerals from water to render it more suitable for drinking and washing. “Water conditioning” means any action other than water softening taken with respect to water which renders the water fit for its intended use or more healthful or enjoyable for human consumption. The phrase “water conditioning” includes but is not limited to water filtration, water purification, deionization and reverse osmosis. The service of water purification is taxable whether performed for residential, commercial, industrial, or agricultural users.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.68(422) Motor vehicle, recreational vehicle and recreational boat rental. On and after July 1, 1985, the gross receipts from the rental of certain motor vehicles subject to registration, which are registered for a gross weight of 13 tons or less, recreational vehicles and recreational boats are subject to tax.

26.68(1) Use of vehicles and boats with drivers or operators. For the purposes of this rule, if the services of a driver or operator are provided as part of the fee for the use of any vehicle or boat, no rental of the vehicle or boat has occurred. Even though the person using the vehicle or boat has the right to control the driver’s or operator’s movements, the gross receipts from use of the vehicle are not subject to tax as vehicle or boat rental. If the vehicle or boat is rented from one person and the services of the driver or operator rented from another, tax will apply.

26.68(2) Rental of vehicles subject to registration.

a. “Certain long-term” leases not subject to tax. The gross receipts from the leasing of any vehicle subject to registration for a gross weight of 13 tons or less are not subject to tax if the lease is a written agreement providing for the lease of the vehicle for more than 60 days and if the lessor, at the time of the signing of the lease, is licensed under Iowa Code chapter 321F. On or after January 1, 1997, a use tax shall be imposed on the lease price of certain motor vehicles leased for a period of 12 months or more. See rule 701—31.5(423).

b. Transactions subject to Iowa sales tax. A “rental” of tangible personal property, such as a vehicle subject to registration, occurs when one person transfers possession of tangible personal property to another person for temporary possession and use, pursuant to contract, *A.C. Nelsen Auto Sales v. Turner*, 44 N.W.2d 36 (Iowa 1950) and *Ballstadt v. Iowa Department of Revenue*, 368 N.W.2d

147 (Iowa 1985). Therefore, a “rental” of a vehicle has occurred in Iowa when, pursuant to a rental contract, possession of a vehicle is transferred to a customer in this state unless paragraph “a” of this subrule is applicable. The tax is collectible when any lump-sum or periodic payment is due under the rental agreement and paid in Iowa. Transfer of possession of the vehicle must have occurred in Iowa; the contract for rental of the vehicle need not have been executed here. Sales tax is payable on transfer to a customer upon possession of a rented vehicle in Iowa regardless of whether the vehicle is subsequently used exclusively in interstate commerce or not if payment by the customer is made in Iowa.

EXAMPLE 1. Customer A signs a rental contract with and takes possession of a rental car from an office of a rental agency located in Des Moines. Thereafter, A drives the car from Des Moines to Dubuque, Iowa, and back. In Des Moines, the rental agency collects gross receipts from the rental of \$100. Such gross receipts would be subject to tax. If the customer had driven the rental car from Des Moines to Madison, Wisconsin, and back to Des Moines, the gross receipts would also be subject to tax.

EXAMPLE 2. Customer B enters into a contract to rent an automobile with a rental agency’s office located in Omaha, Nebraska. B takes possession of the car rented under the contract at the rental agency’s office in Council Bluffs, Iowa. B then drives the car from Council Bluffs to Dubuque and back. All gross receipts from the rental are subject to Iowa sales tax since delivery and payment occurred in Iowa.

EXAMPLE 3. Customer C enters into a contract to rent and takes possession of a rented automobile in Des Moines. Thereafter, C drives the vehicle to California and returns the vehicle to the rental agency’s office in Los Angeles, and there pays a total charge for the rental of \$300. No Iowa sales tax is due. Transfer of possession occurred here, but payment under the lease did not.

EXAMPLE 4. Customer D rents and takes possession of a truck in Des Moines. Before taking possession, D pays the rental agency a \$500 deposit. Rental of the truck is on a mileage and per-day basis. Customer D drives the truck to Phoenix, Arizona. There it is discovered that the mileage and per-day charges add up to \$600. Customer D pays the rental agency an additional \$100 in Phoenix. Iowa sales tax is due upon the \$500 deposit paid in Des Moines but not on the \$100 paid in Phoenix. Only the payment made under the lease in Iowa is subject to tax.

EXAMPLE 5. Customer E rents a car in Chicago, Illinois, and drives it to Des Moines. In Des Moines E pays \$200 for the use of the car. Although payment under the lease occurred in Iowa, transfer of possession of the vehicle did not take place here. This transaction is not subject to sales tax but may be subject to use tax; see rule 701—33.8(423).

26.68(3) Tax collected from customer. The person renting any vehicle subject to registration must collect from the customer and remit to the state of Iowa sales tax on each and every rental payment made in Iowa, no matter how calculated. Tax must be remitted for the period in which each rental payment is due and owing. Rental payments whether calculated in one lump sum, or on a mileage basis, or periodically are subject to tax. Also subject to tax are any charges, such as those for compulsory insurance, which are characterized as something other than rent payments but which are required to be paid as a condition of the rental. Specifically, but not exclusively excluded from the meaning of gross receipts from rental of a vehicle subject to registration are items such as optional collision damage waiver fees, optional personal accident insurance fees, and fuel. If these charges are not to be included as part of rentals, a charge must be separately stated, separately itemized, and the charge cannot be required as a condition of the rental.

Effective July 1, 2002, all airport-imposed fees charged to a customer for the rental of a vehicle are not subject to Iowa sales or use tax, if separately itemized.

26.68(4) Recreational boats. The term “recreational boats” includes, but is not limited to, sailboats, rowboats, motorboats, paddleboats, and canoes. The gross receipts from the sale of tickets on river steamboats carrying passengers for pleasure rides are not taxable as the gross receipts of “recreational boat” rental but are taxable as the gross receipts from an “amusement enterprise.” See rule 701—16.32(422).

26.68(5) Recreational vehicles. The term “recreational vehicles” includes, but is not limited to, bicycles, go-carts, golf carts and horse-drawn wagons or carriages, if rented without a driver. Rental of a recreational vehicle that is a vehicle subject to registration is also subject to tax.

This rule is intended to implement Iowa Code sections 422.45 and 423.7A and section 516D.3(6) as amended by 2002 Iowa Acts, House File 2622, section 29.

701—26.69(422) Security and detective services. On or after July 1, 1985, persons engaged in the business of providing security or detective services are performing services, the gross receipts of which are subject to tax.

26.69(1) Security service characterized. Any person who provides a service, the purpose of which is to protect property from theft, vandalism or destruction or individuals from physical attack or harassment is providing a “security service.” Persons engaged in the following services are providing a taxable security service. The list is not exclusive: rental of guard dogs, burglar and fire alarm systems; providing security guards, bodyguards and mobile patrols; and protection of computer systems against unauthorized penetration.

26.69(2) Detective services characterized. Persons engaged, for a consideration, in the service of investigation for the purpose of obtaining information regarding any one or more of the following matters are engaged in the business of providing a “detective service,” and their gross receipts shall be subject to tax. Investigation of crimes or wrongs done or threatened; the habits, conduct, movements, whereabouts, associations, transactions, or reputation or character of any person; the credibility of witnesses or other persons; the investigation or recovery of lost or stolen property or the cause, origin, or responsibility for fires, accidents, or injuries to property; the investigation of the truth or falsity of any statement or representation; the detection of deception; or the business of securing evidence to be used before authorized investigating committees, boards of award or arbitration, or in the trial of civil or criminal cases. The services of a peace officer engaged privately in security or detection work are also subject to tax.

26.69(3) Gross receipts not subject to tax. Gross receipts from the following activities are not subject to tax as the gross receipts from security or detective services.

a. The services of a person employed full- or part-time by an employer in connection with the affairs of the employer.

b. The services of an attorney licensed to practice in Iowa, while performing duties as an attorney.

c. The services of a person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of any person.

d. The services of a person exclusively engaged, either as an employee or an independent contractor, in making investigations and adjustments for insurance companies.

e. The service of notice, or any other document, to a party, witness or any other person in connection with any criminal, civil or administrative litigation.

f. The service of soliciting any debtor to pay or collecting payment for any debt.

g. The service of securing information regarding the fitness or unfitness of any individual for prospective employment, if such information is secured by written or electronic communication only, e.g., checking of résumés.

h. Services as a consultant, who is rendering advice or providing training with regard to security and detection matters.

26.69(4) Charges excluded from gross receipts. Mileage and other travel expenses, lodging and meal expenses, fees paid for records, and amounts paid for information do not constitute a portion of the gross receipts from security or detective services if separately identified, separately billed and reasonable in amount.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.70(422,423) Lobbying. Rescinded IAB 11/14/01, effective 12/19/01.

701—26.71(422,423) Solid waste collection and disposal services.**26.71(1) Definitions.**

a. “*Solid waste*” is garbage, refuse, or sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954. On or after July 1, 1994, the term also excludes auto hulks, street sweepings, ash, construction debris, mining waste, trees, tires, lead acid batteries and used oil.

b. Rescinded IAB 10/12/94, effective 11/16/94.

c. “*Agricultural operations*.” An agricultural operation is any enterprise engaged in the raising of crops or livestock for market on an acreage. Included within the meaning of the term are feed lots; operations growing and raising hybrid seed corn or other seed for sale to farmers; nurseries; ranches; orchards and dairies. Excluded from the meaning of the term are commercial greenhouses; logging; beekeeping; catfish raising operations; those engaged in the production of Christmas trees; and those raising nondomesticated animals, such as mink, or nondomesticated fowl. The above list of inclusions and exclusions from the term “agricultural operation” is not exhaustive.

d. “*Industrial operation*.” A business is an “industrial operation” if its purchases or rentals of machinery or equipment are eligible for the Iowa sales and use tax exemption for industrial machinery and equipment. See Iowa Code subsection 422.45(27).

e. “*Mining operation*.” A mining operation is one engaged in either underground mining, strip mining, or quarrying.

f. “*Nonresidential commercial operation*.” Any operation which is an industrial, commercial, agricultural, or mining operation whether for profit or not. Included within the meaning of the term “nonresidential commercial operation” are hotels and motels. Excluded from the meaning of the term are apartment complexes, mobile home parks, or a single-family or multifamily dwelling. The word “commercial” is not to be understood in a narrow sense as referring only to a “for profit” operation, but in the broader sense of that word to refer to all organizations (for instance, churches, charities, and fraternal organizations) that are involved in the buying and selling of goods and services in the marketplace generally.

Examples of “nonresidential commercial operations” include the following: professional firms (doctors, lawyers, accountants, or dentists); restaurants; repair persons; persons selling and renting all sorts of tangible personal property; persons selling insurance of all kinds; appraisers; the skilled trades (e.g., plumbers, carpenters, and electricians); construction contractors; banks and savings and loans; barbers and beauticians; day care centers; counseling services; employment agencies; janitorial services; landscapers; painters; pest control; photography; printing; realtors; storage services; the United Way; the American Cancer Society; the Elks and Masons; churches, synagogues, and mosques; and not-for-profit hospitals which are not licensed under Iowa Code chapter 135B. This term does not include not-for-profit hospitals which meet the criteria of Iowa Code section 422.45(54). These examples are not exclusive.

26.71(2) Tax imposed. On and after April 1, 1992, gross receipts from the sale, furnishing, or service of solid waste collection and disposal are taxable.

Date of billing controls imposition of tax. Gross receipts from the sale, furnishing, or service of solid waste collection and disposal are subject to the Iowa sales tax if the date for the retailer’s billing of a customer falls on or after April 1, 1992. If a bill itself contains no billing date, the date of billing is the billing date set out in the retailer’s books and records. If a retailer’s books and records contain no billing date and the bill is sent by mail, the date of the bill is the postmark on the letter containing it.

26.71(3) Retailers obligated to collect the tax. Counties and municipalities which provide the service of solid waste collection and disposal to nonresidential commercial operations are obligated to collect Iowa sales tax upon the gross receipts from the provision of those services. A city or county providing the service of solid waste disposal is a “retailer” obligated to collect tax from these operations.

Any person who has contracted to provide solid waste collection and disposal service to a city or municipality is obligated to collect tax upon the gross receipts from that service performed for the city or county on behalf of nonresident commercial operations located within the city or county.

EXAMPLE: City D contracts with ABC Disposal Service for ABC to provide solid waste removal to persons within the boundaries of City D. In return for this service, City D pays ABC Disposal Service \$2 million per year. Some of the persons for whom ABC collects and disposes of solid waste are retail sales businesses, another is a manufacturing plant, another an apartment building, others are a quarry and turkey raising operation located within the city limits; finally, a number of persons whose garbage is collected by ABC are residents who own or rent their homes. ABC must collect tax from City D upon that portion of its business which is attributable to the service of solid waste collection and disposal which ABC provides to the city on behalf of the nonresident commercial operations located within City D. See subrule 26.71(4) for suggestions concerning formulas which ABC might use to compute the amount of tax which it is obligated to collect from City D.

26.71(4) Retailers who provide both taxable and nontaxable solid waste collection and disposal service. A retailer who is paid in one lump sum by a customer for providing both taxable and nontaxable solid waste collection and disposal service may, depending upon circumstances, collect tax upon all, none, or some of the proceeds collected from the customer. A retailer must collect tax upon all proceeds from a customer if nontaxable services rendered are only incidental to the retailer’s taxable services. If taxable services rendered are incidental to nontaxable services rendered, then a retailer need not collect tax upon any of its receipts from a customer. If a substantial portion of the service which a retailer performs is taxable and a substantial portion of the service which it performs is nontaxable, then the retailer must collect tax upon that portion of its proceeds which reflects its taxable service and exclude from tax that portion of its proceeds derived from its nontaxable service.

A retailer may, after filing a petition with and securing the approval of the department, use a formula to determine the amount of taxable and nontaxable services which it performs for any one customer. This formula can then be utilized to calculate the retailer’s taxable gross receipts.

EXAMPLE: ABC Disposal Service is providing solid waste disposal service to Company D. Company D owns 100 residential apartment units and a building containing 20 office suites. Under the contract between ABC and Company D, in return for collecting Company D’s garbage, ABC bills Company D \$750 per month. Part of this billing is, of course, for the nontaxable service of garbage collection from the residential apartment units and part for the taxable service of collecting garbage from the office building. In this instance, the ideal method of separating taxable gross receipts from nontaxable proceeds would be by a formula. A possible formula would be by weight. Assume that 1000 pounds of garbage per month is collected from the apartment building and 500 pounds from the office building. In this case, taxable gross receipts would be computed as follows:

$$\frac{500}{1000 + 500} = 1/3 = \text{Percentage of garbage collected from the taxable office building.}$$

$$750 \times 1/3 = 250 = \text{Taxable gross receipts from the \$750 proceeds.}$$

Other possible bases for a formula include number of units of taxable and exempt operations or number of square feet of taxable and exempt operations if these reasonably reflect the amount of taxable and exempt service performed for any one customer. The department will approve any formula which realistically reflects the amount of taxable and nontaxable work performed for a single customer and paid in one lump sum. Any petition for use of a formula must contain an adequate description of the

petitioner's operation, the formula which will be applied to it and why this formula accurately reflects the taxable and nontaxable work performed by the petitioner.

26.71(5) Tax imposed upon disposal charges or tipping fees. Persons who transport solid waste generated by the transporter or who transport, without compensation, solid waste generated by another person shall pay the tax set out in this rule at the collection or disposal facility to which the waste is transported. The gross receipts shall be based upon the disposal charge or tipping fee imposed by the facility. Also, the amount of any disposal charge or tipping fee imposed as a part of the service of collecting and managing recyclable materials separated from solid waste by the waste generator is excluded from the gross receipts of the tax set out in this subrule.

EXAMPLE: John's Quick Lube hauls its own solid waste to the local landfill. There, once a week, John's Quick Lube pays \$50 to dump all the solid waste which it generates into the landfill, except for the used motor oil which it collects from its customers. John's Quick Lube pays the landfill operator another \$50 per week to collect this used oil and send it on to a different location for recycling into new products. In this case, John's Quick Lube is obligated to pay sales tax upon the \$50 disposal fee charged for the solid waste which enters the landfill. However, exempted from tax is the \$50 paid to the landfill operator to store and pass on the used motor oil. In addition to used motor oil, "recyclable materials" means materials such as paper, glass, metals (e.g., copper, aluminum and iron), and batteries, so long as these materials are separated from other solid waste for the purpose of recycling.

26.71(6) Exemption for a "recycling facility." The gross receipts from the service of solid waste collection and disposal provided to a recycling facility which separates or processes recyclable materials and, as a result of that separation or processing, reduces the volume of the waste collected by at least 85 percent are exempt from tax if the waste is collected and disposed of separately from other solid waste. "Recycling facilities" are those facilities where recyclable materials are separated or processed for the purpose of reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of the recyclable materials in a manner that precludes further use. Because of this, facilities that separate or process recyclable materials for use as fuel are not eligible for this exemption. An example of a qualifying recycling facility is a facility which produces insulation from used glass.

This rule is intended to implement Iowa Code section 422.43.

701—26.72(422,423) Sewage services.

26.72(1) Definitions.

- a. "Sewage service" is the service of collecting rainwater and other liquid and solid refuse or excreta for drainage or purification by means of pipes, channels, or conduits usually placed underground.
- b. "Agricultural operations." This phrase has the meaning ascribed to it in 26.71(1)"c."
- c. "Industrial operations" has the meaning ascribed to it in 26.71(1)"d."
- d. "Mining operation." This term has the meaning ascribed to it in 26.71(1)"e."
- e. "Nonresidential commercial operation." This phrase has the meaning ascribed to it in 26.71(1)"f."

26.72(2) Tax imposed. On and after April 1, 1992, gross receipts from the sale, furnishing, or service of sewage service provided to nonresidential commercial operations are taxable.

The date of billing controls the imposition of the tax. Gross receipts from sewage service are subject to Iowa sales tax if the date for the service provider's billing of a customer falls on or after April 1, 1992. If a bill itself has no billing date, the date of billing is the date set out in the provider's books and records. If a provider's books and records contain no billing date and the bill is sent by mail, the date of the bill is the postmark on the letter containing the bill.

26.72(3) Retailers obligated to collect the tax. Counties, municipalities, sanitary districts, or any other persons which provide sewage service to nonresidential commercial operations are obligated to collect Iowa sales tax upon the gross receipts from the rendering, furnishing, or performing of sewage services to those operations.

Any person who has contracted to provide sewage services to a county or municipality is obligated to collect tax upon the gross receipts from those services performed for the city or county on behalf of nonresident commercial operations located within the city or county.

See subrule 26.71(4) for an explanation of how a retailer who is providing taxable and nontaxable service to the same customer for one lump sum ought to treat the proceeds of such a transaction.

This rule is intended to implement Iowa Code section 422.43.

701—26.73(422,423) Consultant services. Rescinded IAB 6/24/92.

701—26.74(422,423) Aircraft rental. On or after April 1, 1992, the total gross receipts for rental of aircraft are subject to sales and use tax if the rental is for a period of 60 days or less. For purposes of this rule, “aircraft” means the same as the definition in Iowa Code section 328.1, subsection 4, a drone aircraft or aircraft transporting only the pilot.

This rule is intended to implement Iowa Code subsection 422.45(5).

701—26.75(422,423) Sign construction and installation. On or after April 1, 1992, the total gross receipts for the construction and installation of signs are subject to sales and use tax. For purposes of this rule, “sign” means notices erected and maintained for the purpose of providing information, notices, markers, advertising of products or services. A sign includes, but is not limited to, billboards, indoor or outdoor sign devices, and any structure erected and maintained for the purpose of conveying information.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.76(422,423) Swimming pool cleaning and maintenance. On or after April 1, 1992, the total gross receipts for the cleaning and maintenance of a swimming pool are subject to sales and use tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.77(422,423) Taxidermy. On or after April 1, 1992, the total gross receipts for the service of taxidermy are subject to sales and use tax. For purposes of this rule, “taxidermy” means the art or operation of preparing, stuffing, or mounting the skin, head, carcass, or part of a carcass of a dead animal.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.78(422,423) Mini-storage. On or after April 1, 1992, the total gross receipts from mini-storage are subject to sales and use tax. For purposes of this rule, “mini-storage” means a commercial operation that provides individual storage units of various sizes to persons for the purpose of storing tangible personal property. In some instances mini-storage facilities are fenced and the individual units have an alarm system. Persons leasing individual units generally provide their own security lock and they have sole access to the unit. Mini-storage also includes a secured area in which vehicles, boats, recreational vehicles, and camping trailers and other types of tangible personal property are stored. Mini-storage does not include storage lockers or storage units at apartment complexes for the primary convenience of the tenant. Mini-storage space is not a warehouse. See 26.42(1) “b” for provisions on storage of raw agricultural products and household goods.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.79(422,423) Dating services. On and after April 1, 1992, the gross receipts from the service of providing an opportunity for two individuals to meet and interact socially with the possibility of forming a relationship are subject to tax. By way of nonexclusive example: “Dating services” include the services of those who provide an opportunity for individuals to describe themselves to and meet potential partners through videotapes and 900 numbers. Also included within the meaning of the term are escort services. Excluded from the definition of “dating services” are the services of marriage matchmakers, telephone 900 numbers which provide an opportunity only for conversation as opposed to face-to-face meetings, or newspaper and magazine advertisement soliciting for companionship.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.80(422,423) Limousine service. On and after April 1, 1992, the gross receipts from the rendering, furnishing, or performing of a limousine service are subject to Iowa sales tax. A limousine service is one which provides a large or luxurious automobile with a driver by prearrangement. A limousine driver does not cruise the streets soliciting or accepting business, so a taxi service is not a limousine service. Charges for a limousine driver, whether billed as a part of or separate from the charges for a limousine, are taxable.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.81(422) Sales of bundled services contracts. The gross receipts from sales of bundled services contracts are subject to Iowa sales tax. For purposes of this rule, a “bundled services contract” means an agreement providing for a retailer’s performance of services, one or more of which is a taxable service enumerated in Iowa Code section 422.43 and one or more of which is nontaxable or exempt, in return for a consumer’s or user’s single payment for the performance of the services, with no separate statement to the consumer or user of what portion of that payment is attributable to any one service which is a part of the contract. If that portion of a consumer’s payment for a bundled services contract which is attributable to the performance of a taxable service or services can be segregated by contract or otherwise from that portion of the payment which is attributable to the performance of a service or services which are not taxable, then only that portion of the payment which is attributable to the performance of a taxable service or services is subject to tax.

EXAMPLE 1. Company A provides a bundled services contract which provides the following services to consumers: Internet access, interstate long distance service, intrastate long distance service, local telephone service, cable television service, and computer rental. Gross receipts from the performance of Internet access and interstate long distance services are not taxed under Iowa law. Gross receipts from the performance of the other four services are taxable. Company A offers, in six separate contracts, each service individually to customers for the price of \$25 per month. Company A’s monthly charge for its bundled services contract is \$150. Fifty dollars of the monthly charge for the bundled services contract, that portion which represents Internet access and interstate long distance services, is excluded from tax. One hundred dollars, that portion of the monthly charge representing the taxable services of intrastate and local telephone service, cable television and computer rental, is taxable.

EXAMPLE 2. Company B offers a contract for the bundled services of long distance telephone service (interstate and intrastate), local telephone service, and Internet access service. Its monthly charge for these bundled services is \$80. The bundled services contract is the only service contract which Company B offers, and there is nothing else in Company B’s notice to the customer to indicate how much of the monthly service charge is attributable to taxable services and how much is attributable to services which are not taxable. Under these circumstances, the entire amount of \$80 is subject to tax.

As of July 1, 2001, for purposes of the administration of the tax on bundled services contracts, the director of the department may enter into agreements of limited duration with individual retailers, groups of retailers, or organizations representing retailers of bundled services contracts. Once approved, such an agreement shall impose the tax rate only upon that portion of the gross receipts from a bundled services contract which is attributable to taxable services provided under the contract.

This rule is intended to implement Iowa Code Supplement section 422.43.

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CHAPTERS 220 to 223
Reserved

CHAPTER 224
TELECOMMUNICATION SERVICES

701—224.1(423) Taxable telecommunication service and ancillary service. The gross receipts from the sale of all telecommunication service and ancillary service are subject to the sales or use tax. This chapter applies to telecommunication service and ancillary service that are billed on or after November 23, 2011. For telecommunication service and ancillary service billed prior to November 23, 2011, refer to rule 701—18.20(422,423), Iowa Administrative Code.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

701—224.2(423) Definitions.

“800 service” means a telecommunication service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800,” “855,” “866,” “877,” and “888” toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

“900 service” means an inbound toll telecommunication service purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. A 900 service does not include the charge for collection services provided by the seller of the telecommunication service to the subscriber or to services or products sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900 service” and any subsequent numbers designated by the Federal Communications Commission.

“Air-to-ground radiotelephone service” means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunication service for hire to subscribers in aircraft.

“Ancillary services” means services that are associated with or incidental to the provision of a telecommunication service. “Ancillary services” includes, but is not limited to, detailed telecommunication billing, directory assistance, vertical service, and voice mail services.

“Call-by-call basis” means any method of charging for telecommunication services in which the price is measured by individual calls.

“Communications channel” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

“Conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” does not include telecommunication services used to reach the conference bridge.

“Customer” means the person or entity that contracts with the seller of telecommunication services. If the end user of telecommunication services is not the contracting party, the end user of the telecommunication service is the customer of the telecommunication service. For purposes of sourcing sales of telecommunication service, the end user of the telecommunication service is the customer of the telecommunication service when the end user is not also the contracting party. “Customer” does not include a reseller of telecommunication service or for mobile telecommunication service of a serving carrier under an agreement to serve the customer outside the home service provider’s licensed service area.

“Customer channel termination point” means the location where the customer either inputs or receives the communications.

“Detailed telecommunication billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

“Directory assistance” means an ancillary service of providing telephone number information and address information.

“End user” means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

“Fixed wireless service” means a telecommunication service that provides radio communication between fixed points.

“Gross receipts from the sale of telecommunication service” or *“gross receipts”* means all charges to any person which are necessary for the end user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 224.4(9)). Such charges shall be taxable if the charges are necessary to secure telecommunication service in this state even though payment of the charge may also be necessary to secure other services.

“Home service provider” means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. § 124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunication services.

“International” means a telecommunication service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

“Interstate” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

“In this state” means that telecommunication service is provided “in this state” only if both the points of origination and termination of the communication are within the borders of Iowa. Telecommunication service between any other points is “interstate” in nature and not subject to tax.

“Intrastate” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

“Mobile telecommunication service” means the same as that term is defined in Section 124(7) of Public Law 106-252, 4 U.S.C. § 124(7) (Mobile Telecommunications Sourcing Act) and is a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves. Refer also to Iowa Code section 423.2(9) as amended by 2011 Iowa Acts, Senate File 515, section 5.

“Mobile wireless service” means a telecommunication service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination point or both of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunication services that are provided by a commercial mobile radio service provider.

“Paging service” means a telecommunication service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

“Pay telephone service” means a telecommunication service provided through any pay telephone. “Pay telephone service” also includes coin-operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

“Place of primary use” means the street address representative of where the customer’s use of the telecommunication service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunication service, the place of primary use must be within the licensed service area of the home service provider.

“Postpaid calling service” means the telecommunication service obtained by making a payment on a call-by-call basis, either through use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunication service. A postpaid calling service includes a telecommunication service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunication service.

“Prepaid calling service” means the right to access exclusively telecommunication services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, that are sold in predetermined units or dollars of which the number declines with use in a known amount.

“Prepaid wireless calling service” means a telecommunication service that provides the right to utilize mobile wireless service as well as other non-telecommunication services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in

advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

“Private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

“Residential telecommunication service” means telecommunication services or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunication services are considered residential if they are provided to and paid for by an individual resident rather than the institution.

“Service address” means:

1. The location of the telecommunication equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in numbered paragraph “1” is not known, “service address” means the origination point of the signal of the telecommunication service first identified by either the seller’s telecommunication system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the locations in numbered paragraphs “1” and “2” are not known, the service address means the location of the customer’s place of primary use.

“Telecommunication service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. “Telecommunication service” does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser’s primary purpose for the underlying transaction is the processed data or information;

2. Installation or maintenance of wiring or equipment on a customer’s premises;

3. Tangible personal property;

4. Advertising, including but not limited to directory advertising;

5. Billing and collection services provided to third parties;

6. Internet access service;

7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. § 522(6) and audio and video programming services delivered by a commercial mobile radio service provider, as defined in 47 CFR 20.3;

8. Ancillary services;

9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

“Value-added non-voice data service” means a service that otherwise meets the definition of telecommunication service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

“Vertical service” means an ancillary service that is offered in connection with one or more telecommunication services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

“Voice mail service” means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

701—224.3(423) Imposition of tax.

224.3(1) Taxable telecommunication service and ancillary service. The gross receipts from the sale of telecommunication service and ancillary service are subject to the sales or use tax. The following is a nonexclusive list of telecommunication services subject to the Iowa sales and use tax:

- a. Air-to-ground radio telephone service;
- b. Ancillary services except detailed communications billing service;
- c. Conference bridging service;
- d. Fixed wireless service;
- e. Mobile wireless service;
- f. Pay telephone service;
- g. Postpaid calling service;
- h. Prepaid calling service;
- i. Prepaid wireless calling service;
- j. Private communication service;
- k. Residential telecommunication service.

224.3(2) Other taxable services and circumstances. The following is a description of services and circumstances under which certain charges associated with telecommunication service are subject to tax:

a. *Long distance charges.* Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. These charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

b. *Gross receipts from services performed by another company.* Gross receipts collected by a company (selling company) from the end users of telecommunication services and ancillary services performed in this state by another company (providing company) are considered to be the taxable gross receipts of the selling company. The situation is similar to a consignment sale of tangible personal property. Tax must be remitted by the selling company.

c. *Directory assistance.* Charges for directory assistance service rendered in this state are subject to tax.

d. *Electrical installation and repair.* The gross receipts from the installation or repair of any inside wire that provides electrical current that allows an electronic device to function are subject to tax. These gross receipts are from the enumerated service of electrical repair or installation. The gross receipts from “inside wire maintenance charges” for services performed under a service or warranty contract are also subject to tax. Depending upon the circumstances, these gross receipts are for the enumerated service of “electrical repair” or are incurred under an “optional service or warranty contract” for an enumerated service. In either event, the receipts are subject to tax.

e. *Electrical installation or repair: billing methodology.* The gross receipts for the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, are subject to tax regardless of the method used to bill the customer for the service. These methods include but are not limited to:

- (1) A flat fee or a flat hourly charge that covers all costs including labor and materials;
- (2) A premises visit or trip charge;
- (3) A single charge covering and not distinguishing between charges for labor and materials;
- (4) A charge with labor and material segregated; or
- (5) A charge for labor only.

f. *Nonitemized taxes and charges.* Any federal taxes or charges that are not separately stated or billed are subject to Iowa sales tax.

g. Rental of tangible personal property. The gross receipts from the rental of any device for home or office use or to provide a telecommunication service to others are taxable as the rental of tangible personal property. The gross receipts from rental include rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device which is included in the gross receipts for the rental of the device is also subject to tax.

h. Sales of tangible personal property. The sale of any device, new or used, is subject to tax both when the device is in place on the customer's premises at the time of the sale and if the device is sold to the customer elsewhere. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it qualifies for the casual sales exemption. See Iowa Code section 423.3. Other exemptions may be applicable as well.

i. Mandatory charges or fees. Any mandatory handling or other charges billed to a customer for sending the customer an electronic device by mail or by a delivery service are subject to tax. Charges for a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the gross receipts from the sale of the property itself and therefore subject to tax.

j. Deposits. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service is subject to tax as part of gross receipts.

k. Municipal utilities. Sales of telecommunication service and ancillary service to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax. These sales are an exception to the exemption for federal and state government. See subrule 224.4(5).

l. Fax. The service of sending or receiving any document commonly referred to as a "fax" from one point to another within this state is subject to sales tax.

EXAMPLE A. Klear Kopy Services is located in Des Moines, Iowa. Klear Kopy charges a customer \$2 to transmit a fax (via Klear Kopy's fax machine) to Dubuque, Iowa. The \$2 is taxable gross receipts. Midwest Telephone Company charges Klear Kopy \$500 per month for the intrastate communication service on Klear Kopy's dedicated fax line. The \$500 is also gross receipts from a taxable communication service.

EXAMPLE B. The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, separately state the amount of a billing which is attributable to expenses for faxing. For example, "bill to John Smith for August 1997, \$1,000 for legal services performed, fax expenses which are part of this billing—\$30." The \$30 is not gross receipts for the performance of any taxable service because the faxing service is only incidental to the performance of the nontaxable legal services.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

701—224.4(423) Exempt from the tax. This rule provides various specific circumstances involving nontaxable telecommunication service and ancillary service. The following is a nonexclusive list of services that are not subject to the Iowa sales and use tax:

224.4(1) Detailed communications billing service.

224.4(2) Internet access fees or charges.

224.4(3) Value-added non-voice data service.

224.4(4) Separately stated and separately billed charges. Fees and charges that are separately stated and billed are exempt from the sales and use tax. This exemption includes the following items when separately stated and billed:

a. Fees and charges for securing only interstate telecommunication services.

b. Federal taxes.

c. Fees and charges for only interstate directory assistance.

224.4(5) Government entities. Sales of telecommunication service and ancillary service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. This exemption includes sales made to all divisions, boards, commissions, agencies or

instrumentalities of federal, Iowa, county or municipal government. In order to be a sale to the United States government or to the state of Iowa, the government or agency involved must make the purchase of the services and pay the purchase price of the services directly to the vendor. Telecommunication service providers should obtain an exemption certificate from each agency for their records. An exception to this exemption is sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public; such sales are subject to tax.

224.4(6) Private nonprofit educational institutions. Sales of telecommunication service and ancillary service to private, nonprofit educational institutions in this state for educational purposes are exempt from tax.

224.4(7) Enhanced 911 surcharge. An enhanced 911 emergency telephone service surcharge is a surcharge for a service which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point. A surcharge for enhanced 911 emergency telephone service is not subject to sales tax if:

- a. The amount is no more than \$1 per month per telephone access line; and
- b. The surcharge is separately identified and separately billed.

224.4(8) Return of deposit. The return to the customer of any portion of a deposit amount paid by that customer to a company providing telecommunication service is not subject to tax.

224.4(9) Resale exemption. Services or facilities furnished by one telecommunication company to another commercial telecommunication company that the second telecommunication company then furnishes to its customers qualify for the resale exemption under Iowa Code section 423.3(2), including any carrier access charges.

224.4(10) On-line services. Any contracted on-line service is exempt from tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

224.4(11) New construction. The repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, that is performed as part of or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure is exempt from Iowa tax. For more information about the exemptions for new construction, see 701—Chapter 219.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

701—224.5(423) Bundled transactions in telecommunication service.

224.5(1) A “bundled transaction” is the retail sale of two or more products where:

- a. The products are otherwise distinct and identifiable; and
- b. The products are sold for one nonitemized price.

A bundled transaction does not include the sale of any products for which the sales price varies or is negotiable based on the purchaser’s selection of the products included in the transaction.

224.5(2) In the case of a bundled transaction that includes telecommunication service, ancillary service, Internet access, or audio or video programming service, either separately or in combination:

a. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards the portion from the provider’s books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

b. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider’s books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

224.5(3) The provisions of this rule apply unless otherwise provided by federal law.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

701—224.6(423) Sourcing telecommunication service.

224.6(1) The general sourcing principles found in Iowa Code section 423.15 apply to telecommunication services and ancillary services unless the service falls under one of the exceptions set forth in subrule 224.6(2).

224.6(2) Exceptions. The following telecommunication services and products are sourced as follows:

a. Mobile telecommunication service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

b. Prepaid calling service is sourced as provided under Iowa Code section 423.15. However, if the seller has sufficient information available, the sale of prepaid wireless calling service may be sourced to the location of the place of primary use.

c. A sale of a private telecommunication service is sourced as follows:

(1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

(4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

d. The sale of Internet access service is sourced to the customer's place of primary use.

e. The sale of an ancillary service is sourced to the customer's place of primary use.

f. A postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either:

(1) The seller's telecommunication system; or

(2) Information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

g. The sale of telecommunication service sold on a call-by-call basis is sourced to:

(1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

h. The sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

i. The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either the seller's telecommunication system or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

701—224.7(423) General billing issues. This rule is specifically applicable to companies and other persons providing telecommunication service and ancillary service in this state.

224.7(1) Retailers liable for collecting and remitting tax. Retailers that sell taxable telecommunication service and ancillary service are liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

224.7(2) *Billing date and tax period.* Companies that bill their subscribers for telecommunication service on a quarterly, semiannual, annual, or any other periodic basis must include the amount of those billings in their gross receipts. The date of the billing determines the period for which sales tax is remitted. For example, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the gross receipts contained in the bill must be included in the sales tax return for the first quarter of the year. The same principle must be used to determine when tax will be included in payment of a sales tax deposit to the department.

224.7(3) *Permitting business offices.* All companies must have a permit for each business office that provides telecommunication service in this state. The companies must collect and remit tax upon the gross receipts from the operation of those offices.

224.7(4) *Credit.* A taxpayer subject to sales or use tax on telecommunication service and ancillary service who has paid any legally imposed sales or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdiction(s).

224.7(5) *Direct pay permit not applicable to telecommunication services.* The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. However, a direct pay permit holder cannot use the direct pay permit for the purchase of telecommunication services and ancillary services. The seller must charge and collect the sales or use tax from the purchaser on the taxable sales of telecommunication services and ancillary services.

224.7(6) *Guaranteed amounts for coin-operated telephones.* If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax is computed on the greater of the minimum amount guaranteed or the actual taxable gross receipts collected.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

These rules are intended to implement Iowa Code chapter 423 as amended by 2011 Iowa Acts, Senate File 515.

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