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

In addition to the rule changes adopted by agencies, the chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay or suspension imposed by the ARRC pursuant to section 17A.8(9) or 17A.8(10); rescission of a rule by the Governor pursuant to section 17A.4(8); nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa; other action relating to rules enacted by the General Assembly; updated chapters for the Uniform Rules on Agency Procedure; or an editorial change to a rule by the Administrative Code Editor pursuant to Iowa Code section 2B.13(2).

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

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

Editor's telephone 515.281.3355 or 515.242.6873

Agriculture and Land Stewardship Department[21]

Replace Analysis
Replace Chapter 52
Replace Chapter 85

College Student Aid Commission[283]

Replace Analysis
Replace Chapter 10
Replace Chapter 16
Replace Reserved Chapter 34 with Chapter 34

Pharmacy Board[657]

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Replace Analysis
Remove Reserved Chapter 2, Chapter 3, and Reserved Chapter 4
Insert Reserved Chapters 2 to 4
Replace Chapter 7
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Remove Reserved Chapters 12 to 19
Insert Reserved Chapters 12 to 18 and Chapter 19
Replace Chapter 101
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Replace Chapter 300
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Replace Chapter 700
Replace Chapter 900

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 7/27/88, Agriculture Department[30]]
Rules under this Department "umbrella" also include
Agricultural Development Authority[25] and Soil Conservation Division[27]

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CHAPTER 52
MARKETING

CHOOSE IOWA PROMOTIONAL PROGRAM

21—52.1(159) Definitions.

"Department" means the Iowa department of agriculture and land stewardship.

"Food item" means any of the following:

1. A perishable item derived from an agricultural commodity, or processed from an agricultural commodity, that is fit for human consumption.
2. Honey produced from bees in a managed beehive.

"Honey product" means a product where honey is a principal ingredient. For purposes of this definition, a product shall be considered to have honey as a principal ingredient if the product contains at least 50 percent honey by weight.

"Iowa farm" means land in this state used to produce an agricultural commodity.

"Member" means a person who has applied for and been accepted to participate in the choose Iowa promotional program.

"Process" means to prepare a food item in a manner that allows it to be fit for human consumption.

"Processor" is a membership classification that means a person preparing a food item in a manner that allows it to be fit for human consumption.

"Producer" is a membership classification that means a person growing, raising, or harvesting agricultural commodities in the state of Iowa.

"Retailer" is a membership classification that means a person engaged in the business of selling agricultural products to consumers, including food service and restaurants.

"Supporting organization" is a membership classification that means a person, unified group, association, or business supporting the efforts of the choose Iowa promotional program.

"Wholesaler/distributor" is a membership classification that means a person engaged in the business of selling or distributing agricultural products to retailers or institutions.

[**ARC 6552C**, IAB 10/5/22, effective 11/9/22; **ARC 7037C**, IAB 5/31/23, effective 7/5/23]

21—52.2(159) Product qualification.

52.2(1) *Authority of determination.* The department has the sole authority in determining the eligibility of a product for participation in the program.

52.2(2) *General product qualifications.* Except as specified in this chapter, products must meet or exceed the following criteria:

a. Fresh produce and commodities bearing the choose Iowa logo shall be 100 percent grown or raised in Iowa.

b. Meat and meat products bearing the choose Iowa logo shall be derived from animals born, raised, and finished in Iowa. Slaughter and processing must take place in a state- or federally inspected plant within the state of Iowa.

c. Dairy products bearing the choose Iowa logo shall be derived from animals in Iowa. Processing must take place in a state-inspected plant within the state of Iowa.

d. Eggs bearing the choose Iowa logo shall be derived from animals in Iowa.

e. Apicultural products produced by honey bees, including honey, wax, pollen, and propolis, bearing the choose Iowa logo shall be 100 percent of Iowa origin. Honey products shall utilize honey that is 100 percent of Iowa origin.

f. Beer or cider bearing the choose Iowa logo shall be produced in Iowa and contain at least one Iowa agricultural product, such as Iowa malt, hops, apples, corn, or soluble remnant, excluding water.

g. Wine bearing the choose Iowa logo shall contain a minimum of 75 percent Iowa grapes.

h. Spirits bearing the choose Iowa logo shall be distilled in Iowa and contain at least one Iowa agricultural product, excluding water.

52.2(3) *Exceptions.* The department has the authority to establish product qualification requirements specific to individual products and commodities by written order.
[**ARC 6552C**, IAB 10/5/22, effective 11/9/22; **ARC 7037C**, IAB 5/31/23, effective 7/5/23]

21—52.3(159) Application for membership.

52.3(1) *Application requirement.* Persons interested in becoming a member in the choose Iowa promotional program shall do so by making application to the department. New applications may be submitted at any time throughout the year.

52.3(2) *Application review and compliance verification.* The department, upon receipt of an application, will verify the applicant's compliance with this chapter and approve or deny the application. The department will notify the applicant in writing of the approval or denial.

52.3(3) *Duration of membership.* Membership is on an annual basis, coinciding with the member's anniversary date of original registration.

52.3(4) *Membership revocation and termination.* Program membership may be revoked if the member company:

a. No longer meets the qualifications for membership;

b. Violates any applicable statute or rule;

c. Violates any agreement between the department and the member company;

d. Acts in a manner that may damage the reputation of the program.

[**ARC 6552C**, IAB 10/5/22, effective 11/9/22; **ARC 7037C**, IAB 5/31/23, effective 7/5/23]

21—52.4(159) Membership fees. Membership fees will be listed in the membership application and will be charged at the following rates:

Producer	$100
Processor	$100
Wholesaler/distributor	$100
Retailer	$100
Supporting organization	$100

[**ARC 6552C**, IAB 10/5/22, effective 11/9/22; **ARC 7037C**, IAB 5/31/23, effective 7/5/23]

21—52.5(159) Approval for use of logo. Members who wish to use the choose Iowa logo on packaging, labels, flyers, promotional materials, or any other materials that will be viewed by the public must submit a proof of text and design to the department for approval. Requests for approval must be submitted to the department not less than five working days prior to the proposed date of use. Written approval from the department for logo use must be issued prior to use of the logo.
[**ARC 6552C**, IAB 10/5/22, effective 11/9/22]

21—52.6(159) Self-certification. All members shall self-certify that all products marked with the choose Iowa logo meet the qualification criteria as set forth in this chapter. Self-certification is subject to verification through the application and compliance processes.
[**ARC 6552C**, IAB 10/5/22, effective 11/9/22]

21—52.7(159) Compliance.

52.7(1) *Authority of department.* The department may enter upon the premises of any member to examine any records or materials necessary to ensure compliance with these rules.

52.7(2) *Random compliance inspection.* The department may annually perform random compliance inspections.

52.7(3) *Samples.* Upon request of the department, a member shall provide samples of the labels, packaging, merchandising, and promotional materials featuring the choose Iowa logo.
[**ARC 6552C**, IAB 10/5/22, effective 11/9/22]

21—52.8(159) Violations. Any person found in violation of these rules is subject to termination of membership privileges.
[**ARC 6552C**, IAB 10/5/22, effective 11/9/22]

21—52.9 to **52.19** Reserved.

This division is intended to implement Iowa Code section 159.29 as amended by 2022 Iowa Acts, House File 2581.

VALUE-ADDED AGRICULTURE GRANT PROGRAM

21—52.20(159) Definitions. For purposes of this division:

"Agreement" means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

"Applicant" means a person applying for assistance under the program. This includes but is not limited to an individual, business, agricultural cooperative, nonprofit organization, or local government.

"Department" means the Iowa department of agriculture and land stewardship.

"Grant" means an award of assistance with the expectation that, with the fulfillment of the conditions, terms and obligations of the agreement with the department for the project, repayment of funds is not required.

"Program" means the value-added agriculture grant program established under this chapter.

"Project" means an activity or activities undertaken by the applicant to be carried out to meet the goals of the program.
[**ARC 6552C**, IAB 10/5/22, effective 11/9/22]

21—52.21(159) Eligibility.

52.21(1) *Eligible applicants.* To be eligible for a grant under the program, an applicant shall meet all of the following requirements:

a. Be an individual, business, agricultural cooperative, nonprofit organization, or local government.

b. Be in good standing with the state of Iowa.

c. Currently reside or conduct business in Iowa.

52.21(2) *Eligible projects.* To be eligible for a grant under the program, a project shall:

a. Increase sales of Iowa agricultural products by increasing production capacity or expanding market access for value-added projects.

b. Not be in progress until a grant is awarded.

c. Be completed in 12 months or less.

d. Be conducted in Iowa.

52.21(3) *Ineligible expenses.* The following items are not eligible expenses under the program:

a. Equipment and infrastructure for meat processing;

b. Infrastructure for renewable fuels;

c. Expenses incurred prior to the awarding of a grant;

d. Start-up costs including but not limited to inventory, license fees, or working capital;

e. Advertising, public relations, or entertainment costs;

f. Employee benefits and wages;

g. Paying off existing debt, related collection costs, or legal costs;

h. Paying off existing fines, penalties, or settlements from failure to comply with any applicable law or regulations.

52.21(4) *Grant amount and terms.*

a. The maximum amount of financial assistance awarded to an eligible applicant under the program shall not exceed $25,000.

b. An applicant must demonstrate the ability to provide matching support for the project on a one-to-one basis. The matching financial support shall be from private sources and does not include in-kind contributions.

[**ARC 6552C**, IAB 10/5/22, effective 11/9/22; **ARC 7037C**, IAB 5/31/23, effective 7/5/23]

21—52.22(159) Application and review process.

52.22(1) The department will establish a uniform application process and make information about applying available on its website.

52.22(2) Applications will only be accepted during the times established by the department. Late submissions will not be accepted. An individual, business, agricultural cooperative, nonprofit organization, or local government may only apply for one project per grant cycle.

52.22(3) A scoring committee established by the department will review and evaluate applications based on the scoring criteria described in rule 21—52.23(159).

52.22(4) The department, after considering the recommendations made by the scoring committee, will determine which applications to fund and how much should be awarded to each applicant. The department has final decision-making authority on requests for financial assistance for the program.

52.22(5) Priority will be given to applicants who were not awarded a grant in the previous fiscal year.

[**ARC 6552C**, IAB 10/5/22, effective 11/9/22; **ARC 7037C**, IAB 5/31/23, effective 7/5/23]

21—52.23(159) Scoring criteria.

52.23(1) *Application scoring.* A scoring committee will be established by the department to evaluate applications on a scale of 0 to 100. Projects receiving a score below 70 will not be considered.

52.23(2) *Scoring criteria.* The department will use the following criteria to evaluate each application:

a. The extent to which the project addresses the goals of the program to increase the sale of Iowa agricultural products, increase market access, diversify markets, or increase processing capacity: 20 points.

b. The extent to which the project benefits Iowa including the potential to impact many farmers, both short-term and long-term impacts, and the possibility of creating jobs and investments: 20 points.

c. The ability of the applicant to demonstrate sound business management, financial aptitude, and stability: 15 points.

d. The sufficiency of the project's budget and financing structure: 20 points.

e. The sufficiency of the project's proposed work plan and timeline including a detailed description of the steps the applicant will take to complete the project as well as estimated dates: 15 points.

f. The extent to which measurable objectives can be determined that demonstrate the proposed project's benefit to the agriculture community: 10 points.

[**ARC 6552C**, IAB 10/5/22, effective 11/9/22; **ARC 7037C**, IAB 5/31/23, effective 7/5/23]

21—52.24(159) Disbursement of funds. The department will disburse funds for a project only after an agreement has been executed between the applicant and the department and all applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the agreement will be on a reimbursement basis for expenses incurred by the applicant upon completion of a project.

[**ARC 6552C**, IAB 10/5/22, effective 11/9/22; **ARC 7037C**, IAB 5/31/23, effective 7/5/23]

21—52.25 to **52.40** Reserved

DAIRY INNOVATION PROGRAM

21—52.41(159) Definitions. For purposes of this division:

"Agreement" means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

"Applicant" means a person applying for assistance under the program. This includes but is not limited to an individual or business.

"Grant" means an award of financial assistance with the expectation that, with the fulfillment of the conditions, terms, and obligations of the agreement with the department for the project, repayment of funds is not required by the recipient.

"Project" means an activity or activities undertaken by the applicant to be carried out to meet the goals of the program.

"Recipient" means a person who has applied for and been chosen to receive financial assistance through the program.

[**ARC 7127C**, IAB 12/13/23, effective 1/17/24]

21—52.42(159) Eligibility.

52.42(1) *Eligible businesses.* The department has the sole authority in determining the eligibility of an applicant for participation in the program. To be eligible for a grant under the dairy innovation program, an applicant shall meet all the eligibility requirements in Iowa Code section 159.31A(4) as enacted by 2023 Iowa Acts, House File 700, as well as the following:

a. The business must currently be permitted by the department or actively working with the department to obtain a permit.

b. The business must not have been subject to any department license or permit suspension or revocation within the last five years from the date of the application submission.

52.42(2) *Eligible projects.* To be eligible for a grant under the program, a project shall meet the requirements of Iowa Code section 159.31A as enacted by 2023 Iowa Acts, House File 700, as well as the following requirements:

a. Not be in progress until a grant is awarded.

b. Be completed in 12 months or less.

c. Be conducted in Iowa.

52.42(3) *Ineligible expenses.* The following items are not eligible expenses under the program:

a. Expenses incurred prior to the awarding of a grant.

b. Start-up costs including but not limited to inventory, license, or permit fees or working capital.

c. Advertising, public relations, or entertainment costs.

d. Employee benefits and wages.

e. Paying off existing debt, related collection costs, or legal costs.

f. Paying off existing fines, penalties, or settlements from failure to comply with any applicable law or regulations.

52.42(4) *Grant amount and terms.* The maximum amount of financial assistance awarded to a recipient under the program shall not exceed $100,000.

[**ARC 7127C**, IAB 12/13/23, effective 1/17/24]

21—52.43(159) Application and review process.

52.43(1) The department will establish a uniform application process and make information about applying available on its website.

52.43(2) Applications will only be accepted during the times established by the department. Late submissions will not be accepted.

52.43(3) An applicant must demonstrate the ability to provide matching support for the project on a one-to-one basis. The matching financial support shall be from private sources.

52.43(4) A scoring committee established by the department will review and evaluate applications based on the scoring criteria described in rule 21—52.44(159).

52.43(5) Projects for processing and projects for labor-reducing technology will be scored independently of each other.

52.43(6) The department, after considering the recommendations made by the scoring committee, will determine which applications to fund and how much should be awarded to each applicant. The

department has final decision-making authority on requests for financial assistance for the program. The department will notify the applicant in writing of the approval or denial.
[**ARC 7127C**, IAB 12/13/23, effective 1/17/24]

21—52.44(159) Scoring criteria.

52.44(1) *Application scoring.* A scoring committee will be established by the department to evaluate applications with a score of 0 to 100. Projects receiving a score below 60 will not be considered.

52.44(2) *Scoring criteria.* The department will use the following criteria to evaluate each application:

a. The extent to which the project addresses the goals of the program to create new jobs, expand opportunities and provide greater flexibility or convenience for local small-scale farmers, and reduce labor associated with the on-farm production and storage of milk: 25 points.

b. The sufficiency of the project's budget and financing structure: 20 points.

c. The sufficiency of the project's proposed work plan and timeline including a detailed description of the steps the applicant will take to complete the project as well as estimated dates: 20 points.

d. The ability of the applicant to demonstrate sound business management, financial aptitude, and stability: 15 points.

e. The extent to which measurable objectives can be determined that demonstrate the proposed project's benefit to the agriculture community: 10 points.

f. The completeness of the application information and sufficiency of detail used to describe the project in the application: 10 points.
[**ARC 7127C**, IAB 12/13/23, effective 1/17/24]

21—52.45(159) Grant agreement.

52.45(1) *Agreement terms.* An agreement shall not be for more than one year. The department, in its sole discretion, may grant an extension, not to exceed three months, if the department determines extenuating circumstances are likely to delay or have delayed the completion of the project.

52.45(2) *Termination of agreement.* An agreement shall be terminated if the recipient no longer meets the qualifications for an eligible business. Additionally, an agreement may be terminated if the recipient, in the sole opinion of the department, does any of the following:

a. Substantially violates any applicable statute or rule;

b. Violates any agreement between the department and the recipient; or

c. Acts in a manner that may damage the reputation of the program.
[**ARC 7127C**, IAB 12/13/23, effective 1/17/24]

21—52.46(159) Disbursement of funds. The department will disburse funds for a project only after an agreement has been executed between the recipient and the department and all the applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the agreement will be on a reimbursement basis for expenses incurred by the applicant and will be disbursed upon final completion of a project.
[**ARC 7127C**, IAB 12/13/23, effective 1/17/24]

21—52.47(159) Authority of department. The department may enter upon the premises of any recipient to examine any records or materials necessary to ensure compliance with these rules.
[**ARC 7127C**, IAB 12/13/23, effective 1/17/24]

This division is intended to implement 2022 Iowa Acts, House File 2560.

[Filed ARC 6552C (Notice ARC 6433C, IAB 7/27/22), IAB 10/5/22, effective 11/9/22]
[Filed ARC 7037C (Notice ARC 6907C, IAB 2/22/23), IAB 5/31/23, effective 7/5/23]
[Filed ARC 7127C (Notice ARC 7069C, IAB 9/20/23), IAB 12/13/23, effective 1/17/24]

CHAPTER 85
WEIGHTS AND MEASURES

[Appeared as Ch 14, 1973 IDR]
[Certain rules renumbered 5/3/78]
All tolerances and specifications for the weights and measures division were adopted from the U.S. Bureau of Standards Handbook II, 44 published September 1949.
[Prior to 7/27/88 see Agriculture Department 30—Ch 55]

21—85.1(215) Definitions.

"Automatic grain scale" means a scale constructed with a mechanical device so that a stream of grain flowing into its hopper can be checked at any given weight, long enough to register said weight and dump the load. The garner above the scale should have at least three times the capacity of the scale to ensure a steady flow at all times.

1. On automatic-indicating scales. On a particular scale, the maintenance tolerances applied shall be not smaller than one-fourth the value of the minimum reading-face graduation; the acceptance tolerances applied shall be not smaller than one-eighth the value of the minimum reading-face graduation.

2. However, on a prepacking scale (D.11, D.12) having graduated intervals of less than one-half ounce, the maintenance tolerances applied shall not be smaller than one-eighth ounce and the acceptance tolerances applied shall be not smaller than one-sixteenth ounce.

"Counter scale" means a scale of any type that is especially adopted on account of its compactness, light weight, moderate capacity and arrangements of parts for use upon a counter, bench, or table.

"Motor truck scale" means a scale built by the manufacturer for the use of weighing commodities transported by motor truck.

This rule is intended to implement Iowa Code section 215.18.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.2(189,215) Weights and measures.

85.2(1) The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology (NIST) and published in NIST Handbook 44 amended or revised as of January 1, 2020, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

85.2(2) The NIST Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality, Handbook 133, Checking the Net Contents of Packaged Goods, Type Evaluation, and all supplements to these handbooks, as published by the NIST amended or revised as of January 1, 2020, are adopted in their entirety by reference except as modified by state statutes, or by rules adopted and published by the department.

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.3 to **85.9** Reserved.

WEIGHTS AND SCALES

21—85.10(215) Scale design. A scale shall be of such materials and construction that (1) it will support a load of its full nominal capacity without developing undue stresses or deflections, (2) it may reasonably be expected to withstand normal usage without undue impairment of accuracy or the correct functioning of parts, and (3) it will be reasonably permanent in adjustment.

85.10(1) *Stability of indications.* A scale shall be capable of repeating with reasonable precision its indications and recorded representations. This requirement shall be met irrespective of repeated manipulation of any scale element in a manner duplicating normal usage, including:

a. Displacement of the indicating elements to the full extent allowed by the construction of the scale,

b. Repeated operation of a locking device, and

c. Repeated application or removal of unit weights.

85.10(2) *Interchange or reversal of parts.* Parts that may readily be interchanged or reversed in the course of normal usage shall be so constructed that their interchange or reversal will not materially affect the zero-load balance or the performance of the scale. Parts which may be interchanged or reversed in normal field assembly shall be:

a. So constructed that their interchange or reversal will not affect the performance of the scale, or

b. So marked as to show their proper positions.

85.10(3) *Pivots.* Pivots shall be made of hardened steel, except that agate may be used in prescription scales, and shall be firmly secured in position. Pivot knife-edges shall be sharp and straight, and cone-pivot points shall be sharp.

85.10(4) *Position of equipment, primary or recording indicating elements (electronic weighing elements).* A device equipped with a primary or recording element shall be so positioned that its indications may be accurately read and the weighing operations may be observed from some reasonable "customer" position; the permissible distance between the equipment and a reasonable customer position shall be determined in each case upon the basis of individual circumstances, particularly the size and character of the indicating element; a window large enough should be placed in the building and the installation should be so arranged as to afford an unobstructed view of the platform.

This rule is intended to implement Iowa Code section 215.18.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.11(215) Scale pit.

85.11(1) In the construction of a scale pit, walls must be of reinforced concrete. A slab floor must be installed in the pit. The floor must be at least 12 inches thick with a minimum of grade 40 reinforcement rod running into all piers and sidewalls, installed according to the manufacturer's specifications. There shall be an approach at each end of the scale of not less than ten feet, and said approach shall be of reinforced concrete 12 inches thick on a level with the scale deck. A slope of a one-inch drop across the ten-foot span may be allowed for drainage.

85.11(2) Electronic scales shall have a vertical clearance of not less than four feet from the floor line to the bottom of the I-beam of the scale bridge, thus providing adequate access for inspection and maintenance. The load-bearing supports of all scales installed in a fixed location shall be constructed to ensure the strength, rigidity and permanence required for proper scale performance.

This rule is intended to implement Iowa Code section 215.15.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.12(215) Pitless scales. A person may install pitless electronic, self-contained and vehicle scales in a permanent location provided the following conditions for the construction are incorporated:

85.12(1) Scale installation applications and permits must be submitted to the department the same as the pit scale installation, with specifications being furnished by the manufacturer, for approval.

85.12(2) Piers shall extend below the frost line or be set on solid bedrock, and they shall be of reinforced concrete.

85.12(3) A reinforced concrete slab the width of the scale, at least six inches thick, shall run full length under the scale. Slab and piers shall be tied together with reinforcement rod, with a minimum clearance of eight inches between floor and weighbridge.

85.12(4) Reinforced Portland cement approaches at least 12 inches thick, ten feet long and as wide as the scale shall be provided on each end in a level plane with the scale platform.

85.12(5) A scale shall be installed at an elevation to ensure adequate drainage away from the scale.

85.12(6) A scale platform and indicator shall be protected from wind and other elements that could cause inaccurate operation of the scale. Protection modifications that attach to or touch the scale or parts attached to the scale shall be approved by the department prior to installation.

This rule is intended to implement Iowa Code section 215.14.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.13(215) Master weights. Master scale test weights used for checking scales after being overhauled must be sealed as to their accuracy once every two years. Said weights after being sealed are to be used only as master test weights.

This rule is intended to implement Iowa Code section 215.17.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.14(215) Provision for sealing coin slot. Provision shall be made on a coin-operated scale for applying a lead and wire seal in such a way that insertion of a coin in the coin slot will be prevented.

This rule is intended to implement Iowa Code section 215.18.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.15(215) Lengthening of platforms. The length of the platform of a vehicle scale shall not be increased beyond the manufacturer's designed dimension except when the modification has been approved by a competent scale-engineering authority, preferably that of the engineering department of the manufacturer of the scale, and by the weights and measures bureau.

This rule is intended to implement Iowa Code section 215.18.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.16(215) Accessibility for testing purposes. A large capacity scale shall be so located, or such facilities for normal access thereto shall be provided, that the test weights of the weights and measures official, in the denominations customarily provided, and in the amount deemed necessary by the weights and measures official for the proper testing of the scale, may readily be brought to the scale by the customary means; otherwise, it shall be the responsibility of the scale owner or operator to supply such special facilities, including necessary labor, as may be required to transport the test weights to and from the scale, for testing purposes, as required by the weights and measures official. If the design, construction or location of a large-capacity scale is such as to require a testing procedure involving special accessories or an abnormal amount of handling of test weights, such accessories or needed assistance in the form of labor shall be supplied by the owner or operator of the scale, as required by the weights and measures official.

This rule is intended to implement Iowa Code sections 215.1A and 215.10.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.17(215) Wheel-load weighers and axle-load scales. The requirements for wheel-load weighers and axle-load scales apply only to such scales in official use for the enforcement of traffic in highway laws or for the collection of statistical information by government agencies.

This rule is intended to implement Iowa Code section 215.18.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.18 and **85.19** Reserved.

MEASURES

21—85.20(214A,208A) Motor fuel and antifreeze tests and standards.

85.20(1) In the interest of uniformity, the tests and standards for motor fuel, including but not limited to renewable fuels such as ethanol blended gasoline, biodiesel, and biodiesel blended fuel, and components such as an oxygenate, raffinate natural gasoline and motor vehicle antifreeze shall be those established by ASTM International in effect on June 30, 2023, with the following exceptions:

a. Biodiesel blended fuel classified as higher than B-20 but less than B-99.

b. Tests and standards that are otherwise required by statute.

85.20(2) The components used to produce biodiesel blended fuel classified as higher than B-20 but less than B-99 must meet the following department standards:

a. The biodiesel must meet ASTM International specification D6751.

b. The diesel must meet ASTM International specification D975.

85.20(3) Diesel fuel that does not comply with ASTM International specifications may be blended with biodiesel, additives, or other diesel fuel so that the finished blended product does meet the applicable specifications.

This rule is intended to implement Iowa Code sections 208A.5, 208A.6, 214A.2, and 215.18.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.21(215) Tolerances on petroleum products measuring devices. All pumps or meters at filling stations may have a tolerance of not over five cubic inches per five gallons, minus or plus. All pumps or measuring devices of a large capacity shall have a maintenance tolerance of 50 cubic inches, minus or plus, on a 50-gallon test. An additional one-half cubic inch tolerance shall be added per gallon over and above a 50-gallon test. Acceptance tolerances on large capacity pumps and measuring devices shall be one-half the maintenance tolerances.

This rule is intended to implement Iowa Code sections 214.2 and 215.20.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.22(215) Meter adjustments and tagging. If a meter is found to be incorrect and also capable of further adjustment, said meter shall be adjusted, rechecked and sealed. If a seal is broken for any cause other than by a state inspector, the department shall be promptly notified of same.

85.22(1) Companies specializing in testing and repairing gasoline and fuel oil dispensing pumps or meters shall be registered with the weights and measures bureau upon meeting requirements set forth by the department.

85.22(2) In accordance with the NIST Handbook 44, accredited repair and testing companies shall be authorized to affix a security seal, properly marked with the identification of such company.

85.22(3) If a meter is found to be inaccurate, an inspection report shall be left by the inspector requiring repair. After the meter has been repaired and placed in service, the licensee shall notify the weights and measures bureau.

85.22(4) If the meter has not been repaired within 30 days, the meter may be condemned and a red condemned tag may be attached to the meter.

This rule is intended to implement Iowa Code sections 215.5, 215.12 and 215.20.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.23(215) Servicer's license fee. The fee for a servicer's license shall be $10.

This rule is intended to implement Iowa Code section 215.23.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.24(215) Recording elements. All weighing or measuring devices shall be provided with appropriate recording or indicating elements, which shall be definite, accurate and easily read under any conditions of normal operation of the device. Graduations and a suitable indicator shall be provided in connection with indications and recorded representations designed to advance continuously. Graduations shall not be required in connection with indications or recorded representations designed to advance intermittently or with indications or recorded representations of the selector type.

This rule is intended to implement Iowa Code section 215.18.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.25(215) Air eliminator. All gasoline or oil metering devices shall be equipped with an effective air eliminator to prevent passage of air or vapor through the meter. The vent from such eliminator shall not be closed or obstructed.

This rule is intended to implement Iowa Code section 215.18.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.26(215) Delivery outlets. No means shall be provided by which any measured liquid can be diverted from the measuring chamber of the meter or the discharge line therefrom. However, two or more delivery outlets may be installed, if automatic means is provided to ensure that liquid can flow from only one such outlet at one time and the direction of flow for which the mechanism may be set at any time is definitely and conspicuously indicated.

This rule is intended to implement Iowa Code section 215.18.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.27(215) LP-gas delivery. In the delivery of LP-gas by commercial bulk trucks (bobtail) across state lines, it shall be mandatory for all trucks delivering products in Iowa to be equipped with a meter that has been licensed by the state of Iowa and carries the seal of an accredited meter service and proving company.

This rule is intended to implement Iowa Code section 215.20.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.28(215) LP-gas meter registration. The location of all LP-gas liquid meters in retail trade shall be listed, by the owner, with the department. Upon putting a new or used meter into service in the state of Iowa, the user shall report to the weights and measures bureau.

This rule is intended to implement Iowa Code section 215.20.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.29(214A,215) Advertisement of the price of liquid petroleum products for retail use.

85.29(1) Nothing in this rule shall be deemed to require that the price per gallon or liter or any grade or kind of liquid petroleum product sold on the station premises be displayed or advertised except on the liquid petroleum metering distribution pumps.

85.29(2) Petroleum product retailers, if they elect to advertise the unit price of their petroleum products at or near the curb, storefront or billboard, shall display the price per gallon or liter. The advertised price shall equal the computer price settings shown on the metering pump or shall be displayed in a manner clear to the purchaser for discounts offered for cash payment. Product names displayed shall match the product names on the retail motor fuel dispensers and all consumer receipts.

85.29(3) Notwithstanding the provisions of subrule 85.29(2), cash only prices may be posted by the petroleum marketer on the following basis:

a. Cash only prices must be disclosed on the posted sign as "cash only" or similar unequivocal wording in lettering 3″ high and ¼″ in stroke when the whole number price being shown is 36″ or less in height; or in lettering at least 6″ high and ½″ in stroke when the whole number price being shown is more than 36″ in height.

b. Cash prices posted or advertised must be available to all customers, regardless of type of service (e.g., full service or self-service); or grade of product (e.g., regular, unleaded, gasohol and diesel).

c. Cash and credit prices or discounts must be prominently displayed on the dispenser.

d. A chart showing applicable cash discounts expressed in terms of both the computed and posted price shall be available to the customer on the service station premises.

85.29(4) On all outside display signs, the whole number shall not be less than 6″ in height and not less than 3/8″ in stroke, and any fraction shall be at least one-third of the size of the whole number in both height and width.

85.29(5) The price must be complete, including taxes, without any missing numerals or fractions in the price.

85.29(6) Price advertising signs shall identify the type of product (e.g., regular, unleaded, gasohol and diesel), in lettering at least 3″ high and ¼″ in stroke when the whole number price being shown is 36″ or less in height, or in lettering at least 6″ high and ½″ in stroke when the whole number price being shown is more than 36″ in height.

85.29(7) A price advertising sign shall display if the price is in liters, and may display if the price is in gallons, the unit measure in letters of 3″ minimum.

85.29(8) Directional or informational signs for customer location of the type of service or product advertised shall be clearly and prominently displayed on the station premises in a manner not misleading to the public.

85.29(9) The advertising of other commodities or services offered for sale by petroleum retailers in such a way as to mislead the public with regard to petroleum product pricing shall be prohibited.

85.29(10) Ethanol blended gasoline classified with an octane rating of 87 or higher may be labeled or advertised as "super" or "plus."

85.29(11) The octane rating of fuel offered for sale shall be posted on the pump in a conspicuous place. The octane rating shall be posted for registered fuels. No octane rating shall be posted on the pump for ethanol blended gasoline classified as higher than E-15. The minimum octane rating for gasoline offered for sale by a retail dealer is 87 for regular grade gasoline and 91 for premium grade gasoline.

85.29(12) A wholesale dealer selling ethanol blended gasoline or biodiesel fuel to a purchaser shall provide the purchaser with a statement indicating the actual volume percentage present. The statement may be on the sales slip provided or a similar document such as a bill of lading or invoice. This statement shall include the specific amount of biodiesel, even if the amount of renewable fuel is 5 percent or less.

This rule is intended to implement Iowa Code sections 214A.3, 214A.16 and 215.18.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.30(214A,215) Gallonage determination for retail sales. The method of determining gallonage on gasoline or diesel motor vehicle fuel for retail sale shall be on a gross volume basis. Temperature correction or any deliberate methods of heating shall be prohibited.

This rule is intended to implement Iowa Code sections 214A.3 and 215.18.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.31(214,214A,215) Blender pumps. Motor fuel blender pumps or blender pumps installed or modified after November 1, 2008, that sell both ethanol blended gasoline classified as higher than E-15 and gasoline need to have at least two hoses per pump to separate registered gasoline fuels from flex fuels.

This rule is intended to implement Iowa Code section 214A.2.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.32 to **85.39** Reserved.

MOISTURE-MEASURING DEVICES

21—85.40(215A) Testing devices. All moisture-measuring devices will be tested against a measuring device that will be furnished by the department, and all moisture-measuring devices will be inspected to determine whether they are in proper operational condition and supplied with the proper accessories.

This rule is intended to implement Iowa Code section 215A.2.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.41(215A) Rejecting devices. Moisture-measuring devices may be rejected for any of the following reasons:

85.41(1) The moisture-measuring device tested is found to be out of tolerance with the measuring device used by the department by one of the inspectors so assigned by more than 0.7 percent on grain moisture content.

85.41(2) The person does not have available the latest charts for the type of device being used.

85.41(3) The person does not have available the proper scale or scales and thermometers for use with the type of device being used.

85.41(4) The moisture-measuring device is not free from excessive dirt, debris, or cracked glass or is not kept in good operational condition at all times.

This rule is intended to implement Iowa Code section 215A.6.
[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.42(215,215A) Specifications and standards for moisture-measuring devices. The specifications and tolerances for moisture-measuring devices are those established by the United States Department of Agriculture as of November 15, 1971, in chapter XII of GR instruction 916-6, equipment manual, used by the Federal Grain Inspection Service; and those recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44 as of July 1, 1985.

This rule is intended to implement Iowa Code section 215A.3.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.43(215) Testing high-moisture grain. When testing high-moisture grain, the operator of a moisture-measuring device shall use the following procedure: Test each sample six times, adding the six measurements thus obtained and dividing the total by six to obtain an average, which shall be deemed to be the moisture content of such sample.

This rule is intended to implement Iowa Code section 215A.7.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

21—85.44 to **85.49** Reserved.

TESTING AND ACCURACY

21—85.50(452A) Electric vehicle charging stations.

85.50(1) The department will inspect licensed electric fuel dealers and users for accuracy and correctness from a list provided by the department of revenue.

85.50(2) The specifications and tolerances for electric fuel and charging stations shall be those as published in the NIST Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, amended or revised as of January 1, 2023, in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the department.

85.50(3) A charging station and each connector installed on a charging station will be tested for accuracy and correctness utilizing a measuring device that will be furnished by the department and tested against the electric fuel meter serving that charging station.

85.50(4) For purposes of this rule, "connector" means the portion of the charging station that directly interfaces, connects or plugs into an electric vehicle through which electric fuel is supplied to an electric vehicle.

This rule is intended to implement Iowa Code section 452A.21.

[**ARC 7129C**, IAB 12/13/23, effective 1/17/24]

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COLLEGE STUDENT AID COMMISSION[283]

[Prior to 8/10/88, see College Aid Commission[245]]

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UNIFORM POLICIES

283—10.1(261) Purpose. This chapter describes criteria for determining whether a student is considered a resident of Iowa for the purposes of gaining eligibility for funding under programs administered by the college student aid commission.
[**ARC 2205C**, IAB 10/28/15, effective 12/2/15]

283—10.2(261) Definitions.

"Financial metric" is the means by which the commission ranks the relative financial need of an applicant for financial assistance. The calculated financial metric shall be evaluated annually on the basis of a confidential statement of family finances filed on a form designated by the commission. The commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form developed by the U.S. Department of Education, which is used to determine the financial metric. Relative need will be ranked based on the applicant's financial metric provided by the U.S. Department of Education. The FAFSA must be received by the processing agent by the date specified by the commission. A negative financial metric is the equivalent of zero.

"Financial need" is the difference between the applicant's cost of attendance, as defined in Title IV of the federal Higher Education Act of 1965, as of July 1, 2023, and the applicant's financial metric and other available financial assistance at the eligible institution.

"Full-time" means enrollment in at least 12 semester credit hours, or the equivalent, that are part of a program of study. Credits that a student receives through "life experience credit" and "credit by examination" are not eligible for funding. Only coursework required for the student's eligible program of study can be used to determine enrollment status for state award calculations.

"Iowa resident" means a person who:

1. If attending an Iowa regent university, Iowa private college or university, or Iowa barber or cosmetology college, meets the criteria used by the state board of regents to determine residency for tuition purposes as described in rule 681—1.4(262) and, if the person qualifies for residency only as described in 681—paragraph 1.4(2)*"b,"* meets the following additional criteria:

- Is a veteran or qualifying military person domiciled in the state of Iowa who is not dependent upon a parent for financial support;
- Is a dependent veteran or qualifying military person whose parent is domiciled in the state of Iowa; or
- Is the spouse, domestic partner, or dependent child of a veteran or qualifying military person who is domiciled in the state of Iowa; or

2. If attending an Iowa community college, meets the criteria defined by the Iowa department of education to determine residency for community college tuition purposes as defined in 281—subrule 21.2(11) and, if the person qualifies for residency only as described in 281—subparagraph 21.2(11)*"b"*(5), meets the following additional criteria:

- Is a veteran of uniformed service or a national guard member domiciled in the state of Iowa who is not dependent upon a parent for financial support;
- Is a dependent veteran of uniformed service or a national guard member whose parent is domiciled in the state of Iowa; or
- Is the spouse, domestic partner, or dependent child of a veteran of uniformed service or a national guard member who is domiciled in the state of Iowa.

"Part-time" means enrollment which includes 3 to 11 semester credit hours, or the equivalent, that are part of a program of study. Credits that a student receives through "life experience credit" and "credit by examination" are not eligible for funding. Only coursework required for the student's eligible program of study can be used to determine enrollment status for state award calculations.

"Program of study" means a course of study that is eligible for federal student aid programs and leads to an undergraduate diploma, certificate, or degree.

"Satisfactory academic progress" is determined by the eligible institution, the standards of which meet the criteria for participation in federal student aid programs and are published on the eligible institution's website.

[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—10.3(261) Policies.

10.3(1) *Restrictions.* A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the program. The student regains eligibility under this rule by providing documentation to the institution that the student has regained eligibility under Title IV of the Higher Education Act of 1965, as of July 1, 2023.

10.3(2) Reserved.

[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

These rules are intended to implement Iowa Code chapter 261.

[Filed ARC 2205C (Notice ARC 2037C, IAB 6/24/15), IAB 10/28/15, effective 12/2/15]

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CHAPTER 16
FUTURE READY IOWA SKILLED WORKFORCE GRANT PROGRAM

283—16.1(261) Basis for aid. Assistance available under the future ready Iowa skilled workforce grant program is for Iowa residents who are aged 25 or older and are enrolled in approved programs aligned with high-demand jobs.
[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—16.2(261) Definitions. As used in this chapter:

"Approved program" means an eligible program of study as defined in 283—Chapter 10 that is approved through the process described in 283—16.6(261).

"Continuous enrollment" means an eligible student is enrolled on a full-time or part-time basis in successive fall and spring semesters, or the equivalent, after receiving the award. Enrollment in the summer semester is not required to meet this condition.

"Eligible institution" meets the criteria in Iowa Code section 261.132 and the provisions of 283—16.7(261).

"Full-time" means the same as defined in 283—10.2(261).

"Iowa resident" means the same as defined in 283—10.2(261).

"Part-time" means enrollment in at least 6 but less than 12 hours per semester, or the equivalent. An eligible student may enroll in fewer than six semester hours, or the equivalent, in the semester that the credential will be completed if part-time enrollment is not required to complete the program of study.

"Satisfactory academic progress" means the same as defined in 283—10.2(261).

"Semester" means the fall, spring, or summer term of enrollment at an eligible institution, if the eligible institution is on a semester system, or the equivalent, if the institution is on a system other than a semester system.
[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—16.3(261) Eligible applicant. An eligible applicant is an Iowa resident who is enrolled full-time or part-time in an approved program at an eligible institution and who meets the following provisions:

1. Annually completes the applications the college student aid commission (commission) deems necessary on or before the date established by the commission and attends orientation, registers for classes with an academic advisor, and participates in career advising sessions.
2. Meets satisfactory academic progress standards, does not meet a condition in 283—subrule 10.3(1), and upon receipt of the grant, maintains continuous full-time or part-time enrollment during successive fall and spring semesters.
3. Is aged 25 or older as of July 1 prior to the year of enrollment.

[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—16.4(261) Awarding of funds.

16.4(1) *Selection criteria.* All eligible applicants will be considered for an award.

16.4(2) *Extent of award and maximum award.* Eligible applicants may receive no more than the equivalent of four full-time awards. The maximum award will be established annually by the commission but will not be less than $1,000 for a full-time student over the course of the fall and spring semesters.

16.4(3) *Priority for awards.* In the event that funds available are insufficient to provide maximum awards to all eligible applicants, awards are prioritized in the following order:

a. Eligible applicants who received the grant in the prior state fiscal year, by application date.

b. Eligible applicants who did not receive the grant in the prior state fiscal year, by application date.

16.4(4) *Awarding process.*

a. The commission will provide notice of the eligibility criteria and maximum award to participating eligible institutions annually to authorize awarding.

b. The commission will designate eligible applicants for awards and provide eligible institutions with rosters of designated eligible applicants.

c. Eligible institutions will notify recipients of the awards, clearly indicating the award amount and the state program from which funding is being provided and stating that the award is contingent on the availability of state funds.

d. Eligible institutions will apply awards directly to student accounts to cover items included in the cost of attendance, as defined in Title IV of the federal Higher Education Act of 1965, as of July 1, 2023.

e. Eligible institutions will provide information about eligible applicants to the commission in a format specified by the commission. Eligible institutions will make necessary changes to awards due to a change in enrollment, program of study, and financial situation, and promptly report those changes to the commission.

f. Eligible institutions will complete necessary verification and coordinate other aid to ensure compliance with student eligibility requirements and allowable award amounts. Eligible institutions will report changes in student eligibility to the commission.

g. The commission will periodically investigate and review compliance of eligible institutions participating in this program with the criteria established in Iowa Code section 261.132 and this rule.
[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—16.5(261) Exceptions. If an eligible applicant discontinues enrollment at the eligible institution due to military deployment, a temporary medical incapacity, in relation to a declaration of a national or state emergency, or other exceptional circumstances approved by the commission, the eligible applicant may apply for a waiver. If the waiver is approved, the eligible applicant is not required to maintain continuous enrollment during the period covered by the waiver.
[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—16.6(261) Determination of programs of study aligned with high-demand jobs.

16.6(1) *High-demand jobs.* The commission will utilize the department of workforce development's most recent list of statewide high-demand jobs pursuant to Iowa Code section 84A.1B(14) and align those jobs to eligible programs of study.

16.6(2) *Eligible programs of study.* The eligible institution will offer a baccalaureate degree that is aligned with a high-demand job. The classification of instructional program code and the standard occupation code will be used to align eligible programs of study to high-demand jobs.

16.6(3) *Designation.* Eligible institutions will designate the eligible programs of study offered in the corresponding academic year.

16.6(4) *Approved program.* Before an eligible program of study is considered an approved program of study, the department of workforce development and the commission will jointly certify that the program of study is aligned with a high-demand job pursuant to Iowa Code section 84A.1B(14).

16.6(5) *Grandfather clause.* If the state workforce development board removes a high-demand job from a list created pursuant to Iowa Code section 84A.1B(14), an eligible applicant who received an award in a program of study aligned with that high-demand job will continue to receive the award as long as the eligible applicant continues to meet all other eligibility criteria.
[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—16.7(261) Institution eligibility requirements.

16.7(1) *Application process.* An institution requesting to participate in the program may apply to the commission using the commission's designated application. An applicant institution will provide the commission with documentation establishing the applicant institution's eligibility as an eligible institution that offers eligible programs of study. Applicant institutions will submit the application and documentation establishing the applicant institution's eligibility before October 1 of the year prior to the beginning of the academic year for which the applicant institution is applying for participation.

16.7(2) *Public information.* A list of all eligible programs of study, as well as the necessary courses and the suggested course sequence, will be available in a prominent location on the eligible institution's website.

[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

These rules are intended to implement Iowa Code section 261.132.

[Filed ARC 4608C (Notice ARC 4473C, IAB 6/5/19), IAB 8/14/19, effective 9/18/19]
[Filed Emergency After Notice ARC 7130C (Notice ARC 7100C, IAB 10/4/23), IAB 12/13/23, effective 11/17/23]

CHAPTER 34
WORKFORCE GRANT AND INCENTIVE PROGRAM

283—34.1(261) Basis of aid. Assistance available under the Iowa workforce grant and incentive program is based on the financial need of Iowa residents enrolled in eligible programs of study at universities under the Iowa board of regents.
[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—34.2(261) Definitions.

"Academic year" is defined as the fall, spring and summer semesters, in that sequence, within a state fiscal year.

"Eligible institution" means the same as defined in Iowa Code section 256.230.

"Eligible program" means an undergraduate program of study as defined in 283—Chapter 10 that meets the provisions of Iowa Code section 256.230.

"Financial metric" means the same as defined in 283—Chapter 10.

"Financial need" means the same as defined in 283—Chapter 10.

"Full-time" means the same as defined in 283—Chapter 10.

"High-demand job" means the same as described in Iowa Code section 84A.1B(17).

"Iowa resident" means the same as defined in 283—Chapter 10.

"Part-time" means the same as defined in 283—Chapter 10.

"Satisfactory academic progress" means the same as defined in 283—Chapter 10.
[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—34.3(261) Eligible workforce grant applicant. An eligible applicant is an Iowa resident who is enrolled full-time or part-time as an undergraduate student in an eligible program at an eligible institution and who meets the following provisions:

1. Annually completes the applications the commission deems necessary on or before the date established by the commission.
2. Establishes financial need, has an eligible financial metric, meets satisfactory academic progress standards, and does not meet a condition in 283—subrule 10.3(1).
[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—34.4(261) Awarding of workforce grant funds.

34.4(1) *Selection criteria.* All eligible applicants will be considered for an award.

34.4(2) *Extent of award and maximum award.* Eligible applicants may receive no more than four full-time or eight part-time semesters of awards, or the equivalent.

a. The maximum award for full-time students will not exceed the student's financial need and will not exceed $2,000 per full-time semester.

b. A part-time student will receive a prorated award, as established by the commission, based on the number of credit hours for which the student is enrolled.

c. Awards will be provided during the fall and spring semesters of enrollment. Awards during the summer semester of enrollment may be provided if funding allows.

34.4(3) *Priority for awards.* In the event that funds available are insufficient to provide an award to all eligible applicants, awards will be prioritized as follows:

a. Eligible applicants who received a workforce grant in the prior academic year.

b. Eligible applicants with the lowest financial metrics.

c. Eligible applicants who are closest to the completion of their eligible program.

34.4(4) *Awarding process.*

a. The commission will provide notice of the eligibility criteria and maximum award to participating eligible institutions annually to authorize awarding.

b. Eligible institutions will notify recipients of the awards, clearly indicating the award amount and the state program from which funding is being provided and stating that the award is contingent on the availability of state funds.

c. Eligible institutions will apply awards directly to student accounts to cover items included in the cost of attendance, as defined in Title IV of the federal Higher Education Act of 1965, as of July 1, 2023.

d. Eligible institutions will provide information about eligible applicants to the commission in a format specified by the commission. Eligible institutions will make necessary changes to awards due to a change in enrollment, program of study, and financial situation and promptly report those changes to the commission.

e. Eligible institutions will complete necessary verification and coordinate other aid to ensure compliance with student eligibility requirements and allowable award amounts. Eligible institutions will report changes in student eligibility to the commission.

f. The commission will periodically investigate and review compliance of eligible institutions participating in this state program with the criteria established in Iowa Code section 256.230 and this rule.

[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—34.5(261) Eligible incentive payment applicant. Individuals who received a workforce grant and completed the eligible program within the same academic year may apply for the incentive payment if they meet the criteria of Iowa Code section 256.230 and are employed in Iowa.

[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

283—34.6(261) Awarding of incentive payments.

34.6(1) *Selection criteria.* All eligible incentive payment applicants will be considered for an award.

34.6(2) *Extent of award and maximum award.* Eligible incentive payment applicants may apply for no more than one incentive payment of up to $2,000.

34.6(3) *Awarding process.*

a. The commission will provide notice of the availability of the incentive payment application to eligible incentive payment applicants following completion of the eligible program. Eligible incentive payment applicants will apply for the incentive and begin full-time employment in a high-demand job in Iowa within six months of completing the eligible program.

b. Following the application deadline, the commission will designate eligible applicants for awards and begin tracking their employment.

c. After the applicant has completed 12 consecutive months of full-time employment, commission staff will verify with the Iowa employer that the applicant was employed full-time in a job position that is aligned with a high-demand job.

d. Following verification with the employer, the commission will make payment to the eligible incentive payment applicant.

[**ARC 7130C**, IAB 12/13/23, effective 11/17/23]

These rules are intended to implement 2023 Iowa Acts, Senate File 560.

[Filed Emergency After Notice ARC 7130C (Notice ARC 7100C, IAB 10/4/23), IAB 12/13/23, effective 11/17/23]

CHAPTER 10
CONTROLLED SUBSTANCES

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 8]

657—10.1(124) Purpose and scope. This chapter establishes the minimum standards for any activity that involves controlled substances. Any person or business that manufactures; distributes; dispenses; prescribes; conducts instructional activities, research, or chemical analysis with; or imports or exports controlled substances listed in Schedules I through V of Iowa Code chapter 124 in or into the state of Iowa, or that proposes to engage in such activities, shall obtain and maintain a registration issued by the board unless exempt from registration pursuant to rule 657—10.8(124). A person or business required to be registered shall not engage in any activity for which registration is required until the application for registration is granted and the board has issued a certificate of registration to such person or business. A registration is not transferable to any person or business.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.2(124) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Authorized collection program" means a program administered by a registrant that has modified its registration with DEA to collect controlled substances for the purpose of disposal. Federal regulations for such programs can be found at www.deadiversion.usdoj.gov/drug_disposal/. Modification to the registrant's Iowa controlled substances Act registration shall not be required.

"Board" means the Iowa board of pharmacy.

"CSA" means the Iowa uniform controlled substances Act.

"CSA registration" or *"registration"* means the registration issued by the board pursuant to the CSA that signifies the registrant's authorization to engage in registered activities with controlled substances.

"DEA" means the United States Department of Justice, Drug Enforcement Administration.

"Individual practitioner" means a physician or surgeon (M.D.), osteopathic physician or surgeon (D.O.), dentist (D.D.S. or D.M.D.), doctor of veterinary medicine (D.V.M.), podiatric physician (D.P.M.), optometrist (O.D.), physician assistant (P.A.), resident physician, advanced registered nurse practitioner (A.R.N.P.), or prescribing psychologist.

"Prescription monitoring program," "PMP," or *"program"* means the program established pursuant to 657—Chapter 37 for the collection and maintenance of PMP information and for the provision of PMP information to authorized individuals.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.3(124) Who shall register. The following persons or businesses shall register on forms provided by the board:

1. Manufacturers, distributors, importers, and exporters located in Iowa. Effective January 1, 2018, nonresident manufacturers, distributors, importers, and exporters distributing controlled substances into Iowa.
2. Reverse distributors located in Iowa. Effective January 1, 2018, nonresident reverse distributors engaging in the transfer of controlled substances with registrants located in Iowa.
3. Individual practitioners located in Iowa who are administering, dispensing, or prescribing controlled substances and individual practitioners located outside of Iowa who are dispensing or prescribing controlled substances via telehealth services to patients located in Iowa.
4. Pharmacies located in Iowa that are dispensing controlled substances. Effective January 1, 2018, pharmacies located outside of Iowa that are delivering controlled substances to patients located in Iowa.
5. Hospitals located in Iowa that are administering or dispensing controlled substances. Effective January 1, 2018, hospitals located outside of Iowa that are administering or dispensing controlled substances to patients located in Iowa.
6. Emergency medical service programs that are administering controlled substances to patients located in Iowa.
7. Care facilities that are located in Iowa.

8. Researchers, analytical laboratories, and teaching institutions that are located in Iowa.
9. Animal shelters and dog training facilities that are located in Iowa.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.4(124) Who may register. On a case-by-case basis, the board may issue a registration to a business location not listed in rule 657—10.3(124) if it would be impractical to require each individual practitioner who administers or dispenses controlled substances to separately register at the business location. Examples of business locations that may be eligible for a registration pursuant to this rule include, but are not limited to, ambulatory surgical centers as defined in Iowa Code section 147.163, dialysis centers, federally qualified health centers, and standalone clinics associated with a hospital system.

[**ARC 7025C**, IAB 5/31/23, effective 7/5/23]

657—10.5(124) Application. Applicants for initial registration, registration renewal pursuant to rule 657—10.6(124), or modifications pursuant to rule 657—10.9(124) shall complete the appropriate application and shall include all required information and attachments.

10.5(1) *Signature requirements.* Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

a. If the applicant is an individual practitioner, the practitioner shall sign the application and supporting documents.

b. If the applicant is a business, the application and supporting documents shall be signed by the person ultimately responsible for the security and maintenance of controlled substances at the registered location. If the applicant is a pharmacy, the responsible individual shall be the pharmacist in charge, unless the applicant petitions the board for an alternate responsible individual.

10.5(2) *Prescribing practitioner PMP registration required.* A prescribing practitioner, except for a licensed veterinarian, shall register for the PMP at the same time the prescribing practitioner applies for registration.

10.5(3) *Registration fee exemptions.* The registration fee is waived for federal, state, and local law enforcement agencies and for the following federal and state institutions: hospitals, health care or teaching institutions, and analytical laboratories authorized to possess, manufacture, distribute, and dispense controlled substances in the course of official duties. In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analysis, such laboratories shall maintain a registration to conduct chemical analysis (analytical laboratory). Such laboratories shall be exempt from any registration fee. Exemption from payment of any fees as provided in this subrule does not relieve the entity of registration or of any other requirements or duties prescribed by law.

10.5(4) *Fees.* Each application shall include a nonrefundable registration fee, except as provided in subrule 10.5(3), of $90 per biennium, which may be prorated to the expiration date of the applicant's underlying professional license or other board license if applicable, and may include a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.6(124) Registration renewal. Each registration shall be renewed prior to its expiration. A registrant may renew its registration up to 60 days prior to the registration expiration. The nonrefundable fee for registration renewal shall be $90 per biennium and may include a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

10.6(1) *Delinquent registration grace period.* A registration renewal application that is submitted after expiration but within 30 days following expiration shall be considered delinquent and shall require the nonrefundable payment of the application fee plus a nonrefundable late penalty fee of $90 and may require payment of a surcharge of not more than 25 percent of the applicable fees for deposit into the program fund. A registrant that submits a completed registration renewal application, nonrefundable late application fee, and nonrefundable late penalty fee within 30 days following expiration shall not be subject to disciplinary action for continuing to operate in the 30 days following expiration.

10.6(2) *Delinquent registration reactivation beyond grace period.* If a registration renewal application is not postmarked or hand-delivered to the board office within 30 days following the registration's expiration date, the registrant may not conduct operations that involve controlled substances until the registrant reactivates the registration. A registrant may apply for reactivation by submitting a registration application for reactivation. The nonrefundable fee for reactivation shall be $360 and may include a nonrefundable surcharge of not more than 25 percent of the applicable fee for deposit into the program fund. As part of the reactivation application, the registrant shall disclose the activities conducted with respect to controlled substances while the registration was expired. A registrant that continues to conduct activities with respect to controlled substances without an active registration may be subject to disciplinary sanctions.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.7(124) Separate registration for independent activities; coincident activities. The following activities are deemed to be independent of each other and shall require separate registration. Any person or business engaged in more than one of these activities shall be required to separately register for each independent activity, provided, however, that registration in an independent activity shall authorize the registrant to engage in activities identified coincident with that independent activity.

10.7(1) *Manufacturing controlled substances.* A person or business registered to manufacture controlled substances in Schedules I through V may distribute any substances for which registration to manufacture was issued. A person or business registered to manufacture controlled substances in Schedules II through V may conduct chemical analysis and preclinical research, including quality control analysis, with any substances listed in those schedules for which the person or business is registered to manufacture.

10.7(2) *Distributing controlled substances.* This independent activity includes the delivery, other than by administering or dispensing, of controlled substances listed in Schedules I through V. No coincident activities are authorized.

10.7(3) *Dispensing, administering, prescribing, or instructing with controlled substances.* These independent activities include, but are not limited to, prescribing, administering, and dispensing by individual practitioners; dispensing by pharmacies and hospitals; and conducting instructional activities with controlled substances listed in Schedules II through V. A person or business registered for these independent activities may conduct research and instructional activities with those substances for which the person or business is registered to the extent authorized under state law. If an entity that engages in the distribution, administration, dispensing, or storing of controlled substances maintains multiple licenses, such as a hospital that has both inpatient and outpatient pharmacies, a separate registration shall be maintained for each license.

10.7(4) *Conducting research with controlled substances listed in Schedule I.* A researcher may manufacture or import the substances for which registration was issued provided that such manufacture or import is permitted under the federal DEA registration. A researcher may distribute the substances for which registration was issued to persons or businesses registered or authorized to conduct research with that class of substances or registered or authorized to conduct chemical analysis with controlled substances.

10.7(5) *Conducting research with controlled substances listed in Schedules II through V.* A researcher may conduct chemical analysis with controlled substances in those schedules for which registration was issued, may manufacture such substances if and to the extent such manufacture is permitted under the federal DEA registration, and may import such substances for research purposes. A researcher may distribute controlled substances in those schedules for which registration was issued to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances, and to persons exempt from registration pursuant to Iowa Code section 124.302(3), and may conduct instructional activities with controlled substances.

10.7(6) *Conducting chemical analysis with controlled substances.* A person or business registered to conduct chemical analysis with controlled substances listed in Schedules I through V may manufacture and import controlled substances for analytical or instructional activities; may distribute such substances

to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempt from registration pursuant to Iowa Code section 124.302(3); may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

10.7(7) *Importing or exporting controlled substances.* A person or business registered to import controlled substances listed in Schedules I through V may distribute any substances for which such registration was issued.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.8(124) Separate registrations for separate locations; exemption from registration. A separate registration is required for each principal place of business or professional practice location where controlled substances are manufactured, distributed, imported, exported, dispensed, stored, or collected for the purpose of disposal unless the person or business is exempt from registration pursuant to Iowa Code section 124.302(3), this rule, or federal regulations.

10.8(1) *Warehouse.* A warehouse where controlled substances are stored by or on behalf of a registered person or business shall be exempt from registration except as follows:

a. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to registered locations other than the registered location from which the substances were delivered to the warehouse.

b. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to persons exempt from registration pursuant to Iowa Code section 124.302(3).

10.8(2) *Sales office.* An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised shall be exempt from registration. Such office shall not contain controlled substances, except substances used for display purposes or for lawful distribution as samples, and shall not serve as a distribution point for filling sales orders.

10.8(3) *Prescriber's office.* An office used by a prescriber who is registered at another location and where controlled substances are prescribed but where no supplies of controlled substances are maintained shall be exempt from registration. However, a prescriber who practices at more than one office location where controlled substances are administered or otherwise dispensed as a regular part of the prescriber's practice shall register at each location wherein the prescriber maintains supplies of controlled substances.

10.8(4) *Prescriber in hospital.* A prescriber who is registered at another location and who treats patients and may order the administration of controlled substances in a hospital other than the prescriber's registered practice location shall not be required to obtain a separate registration at the location of the hospital.

10.8(5) *Affiliated interns, residents, or foreign physicians.* An individual practitioner who is an intern, resident, or foreign physician may dispense and prescribe controlled substances under the registration of the hospital or other institution which is registered and by whom the practitioner is employed provided that:

a. The hospital or other institution by which the individual practitioner is employed has determined that the practitioner is permitted to dispense or prescribe drugs by the appropriate licensing board.

b. Such individual practitioner is acting only in the scope of employment or practice in the hospital, institution, internship program, or residency program.

c. The hospital or other institution authorizes the intern, resident, or foreign physician to dispense or prescribe under the hospital registration and designates a specific internal code number, letters, or combination thereof which shall be appended to the institution's DEA registration number, preceded by a hyphen (e.g., AP1234567-10 or AP1234567-12).

d. The hospital or institution maintains a current list of internal code numbers identifying the corresponding individual practitioner, available for the purpose of verifying the authority of the prescribing individual practitioner.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.9(124) Modification or termination of registration. A registered individual or business shall apply to modify a current registration as provided by this rule. When submission of an application and fee is required, such application and fee shall be timely submitted pursuant to rule 657—10.5(124). A registrant which has timely submitted an application for registration modification and fee may continue to service Iowa patients while the registration modification is pending final approval. A registrant which has submitted an application for registration modification after the required date of submission pursuant to this rule but within 30 days of the required date of submission shall be assessed a nonrefundable late penalty fee of $90 in addition to the application fee. A registrant which has submitted an application for registration modification 31 days or later following the required date of submission pursuant to this rule shall be assessed a nonrefundable late penalty fee of $360.

10.9(1) *Change of substances authorized.* Any registrant shall apply to modify the substances authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, registration number, and the substances or schedules to be added to or removed from the registration and shall be signed by the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

10.9(2) *Change of address of registered location.*

a. Individual practitioner or researcher. An entity registered as an individual practitioner or researcher shall apply to change the address of the registered location by submitting a written request to the board. The request shall include the registrant's name, current address, new address, telephone number, effective date of the address change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter. An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the address of the registered location by submitting a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of address.

10.9(3) *Change of registrant's name.*

a. Individual practitioner or researcher. An entity registered as an individual practitioner or researcher shall apply to change the registrant's name by submitting a written request to the board. The request shall include the registrant's current name, new name, address, telephone number, effective date of the name change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification. Change of name, as used in this paragraph, refers to a change of the legal name of the registrant and does not authorize the transfer of a registration issued to an individual practitioner or researcher to another individual practitioner or researcher.

b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter. An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the registrant name by submitting a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of registrant's name.

10.9(4) *Change of ownership of registered business entity.* A change of immediate ownership of a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the submission of a completed application

and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of registrant's ownership.

10.9(5) *Change of responsible individual.* Any registrant, except an individual practitioner or researcher or a pharmacy or hospital, shall apply to change the responsible individual authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, and telephone number; the name and title of the current responsible individual and of the new responsible individual; the effective date of the change; and the registration number and shall be signed by the new responsible individual. No fee shall be required for the modification.

a. Individual practitioners and researchers. Responsibility under a registration issued to an individual practitioner or researcher shall remain with the named individual practitioner or researcher. The responsible individual under such registration may not be changed or transferred.

b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter. The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration within ten days of the identification of a new responsible individual.

10.9(6) *Termination of registration.* A registration issued to an individual or business shall terminate when the registered individual or business ceases legal existence, discontinues business, or discontinues professional practice. A registration issued to an individual shall terminate upon the death of the individual.

10.9(7) *Cancellation of registration.* An individual registrant who no longer needs a registration due to discontinuation of practice in Iowa or discontinuation of possessing, administering, dispensing, or prescribing controlled substances shall contact the board to request cancellation of the registration. An individual registrant may renew the registration upon a return to practice in Iowa or a return to possessing, administering, dispensing, or prescribing controlled substances by submitting an application and a nonrefundable fee for registration renewal of $90 per biennium and a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19; **ARC 5096C**, IAB 7/15/20, effective 8/19/20]

657—10.10(124) Denial of application or discipline of registration.

10.10(1) *Grounds for denial or discipline.* The board may deny any application or discipline any registration upon a finding that the applicant or registrant:

a. Has furnished false or fraudulent material information.

b. Has had the applicant's or registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended, revoked, or otherwise sanctioned.

c. Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this rule only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even if entry of the judgment or sentence has been withheld and the applicant or registrant has been placed on probation.

d. Has committed such acts as would render the applicant's or registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined by that section.

e. Has been subject to discipline by the applicant's or registrant's respective professional licensing board and the discipline revokes or suspends the applicant's or registrant's professional license or otherwise disciplines the applicant's or registrant's professional license in a way that restricts the applicant's or registrant's authority to handle or prescribe controlled substances. A copy of the record of

licensee discipline or a copy of the licensee's surrender of the professional license shall be conclusive evidence.

f. Has failed to obtain or maintain active registration while engaged in activities which require registration.

10.10(2) *Considerations in denial of application or discipline of registration.* In determining the public interest, the board shall consider all the following factors:

a. Maintenance of effective controls against diversion of controlled substances into channels other than legitimate medical, scientific, or industrial channels.

b. Compliance with applicable state and local law.

c. Any convictions of the applicant or registrant under any federal and state laws relating to any controlled substance.

d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's or registrant's establishment of effective controls against diversion.

e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.

f. Suspension or revocation of the applicant's or registrant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.

g. Any other factors relevant to and consistent with the public health and safety.

h. Failure of a prescribing practitioner, except a licensed veterinarian, to register with the PMP pursuant to subrule 10.5(2).

10.10(3) *Proceedings.*

a. Prior to denying an application for registration, the board shall serve upon the applicant a notice of intent to deny the application. An applicant has 30 days to appeal a notice of intent to deny the application. If the notice of intent to deny the application is timely appealed, a notice of hearing shall be issued, initiating a contested case proceeding governed by 657—Chapter 35. Proceedings to refuse renewal of a registration shall not abate the existing registration, which shall remain in effect pending the outcome of the contested case proceeding. A registration may be disciplined in accordance with 657—Chapters 35 and 36.

b. Prior to sanctioning a registration, the board shall serve upon the registrant a notice of hearing and statement of charges. The notice shall contain a statement of the basis therefore and shall call upon the registrant to appear before an administrative law judge or the board at a time and place not less than 30 days after the date of service of the notice. The notice shall also contain a statement of the legal basis for such hearing and for the sanction of registration and a summary of the matters of fact and law asserted. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing unless the board issues an order of immediate suspension. A registration may be disciplined in accordance with 657—Chapters 35 and 36.

10.10(4) *Disposition of controlled substances.* Upon service of an order of the board suspending or revoking a registration, the registrant shall deliver all affected controlled substances in the registrant's possession to the board or authorized agent of the board. Upon receiving the affected controlled substances from the registrant, the board or its authorized agent shall place all such substances under seal and retain the sealed controlled substances pending final resolution of any appeals or until a court of competent jurisdiction directs otherwise. No disposition may be made of the substances under seal until the time for filing an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of proceeds of the sale with the court. Upon a revocation order's becoming final, all such controlled substances may be forfeited to the state.

[**ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.11(124,147,155A) Registration verification. The board may require a nonrefundable fee of $15 for completion of a request for written verification of any registration.

[**ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.12(124) Inspection. The board may inspect, or cause to be inspected, the establishment of an applicant or registrant. The board shall review the application for registration and other information regarding an applicant or registrant in order to determine whether the applicant or registrant has met the applicable standards of Iowa Code chapter 124 and these rules.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.13(124) Security requirements. All registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the board shall use the security requirements set forth in these rules as standards for the physical security controls and operating procedures necessary to prevent diversion.

10.13(1) *Physical security.* Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operation. A registrant shall periodically review and adjust security measures based on rescheduling of substances or changes in the quantity of substances in the possession of the registrant.

a. Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet or safe.

b. Controlled substances listed in Schedules II through V may be stored in a securely locked, substantially constructed cabinet or safe. However, pharmacies and hospitals may disperse these substances throughout the stock of noncontrolled substances in a manner so as to obstruct the theft or diversion of the controlled substances.

c. Controlled substances collected via an authorized collection program for the purpose of disposal shall be stored pursuant to federal regulations, which can be found at www.deadiversion.usdoj.gov/drug_disposal/.

10.13(2) *Factors in evaluating physical security systems.* In evaluating the overall security system of a registrant or applicant necessary to maintain effective controls against theft or diversion of controlled substances, the board may consider any of the following factors it deems relevant to the need for strict compliance with the requirements of this rule:

a. The type of activity conducted.

b. The type, form, and quantity of controlled substances handled.

c. The location of the premises and the relationship such location bears to security needs.

d. The type of building construction comprising the facility and the general characteristics of the building or buildings.

e. The type of vault, safe, and secure enclosures available.

f. The type of closures on vaults, safes, and secure enclosures.

g. The adequacy of key control systems or combination lock control systems.

h. The adequacy of electronic detection and alarm systems, if any.

i. The adequacy of supervision over employees having access to controlled substances, to storage areas, or to manufacturing areas.

j. The extent of unsupervised public access to the facility, including the presence and characteristics of perimeter fencing, if any.

k. The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel.

l. The availability of local police protection or of the registrant's or applicant's security personnel.

m. The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution, and disposition of controlled substances.

10.13(3) *Manufacturing and compounding storage areas.* Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in any schedule shall be stored pursuant to federal laws and regulations.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.14(124) Accountability of controlled substances. The registrant shall maintain ultimate accountability of controlled substances and records maintained at the registered location.

10.14(1) *Records.* Pursuant to rule 657—10.36(124,155A), records shall be available for inspection and copying by the board or its authorized agents for two years from the date of the record.

10.14(2) *Policies and procedures.* The registrant shall have policies and procedures that identify, at a minimum:

a. Adequate storage for all controlled substances to ensure security and proper conditions with respect to temperature and humidity.

b. Access to controlled substances and records of controlled substances by employees of the registrant.

c. Proper disposition of controlled substances.

d. To the extent possible, a separation of duties related to the purchasing, receiving, stocking, dispensing, and reconciling of controlled substance inventory.

e. The reconciliation of controlled substances in Schedule II pursuant to subrule 10.18(4).

f. The accountability measures for controlled substances in Schedules III through V pursuant to rule 657—10.20(124).

g. A controlled substance accountability program to document review of controlled substance inventory adjustments, review patterns of controlled substance loss, and create an action plan following a report of theft or loss pursuant to subrule 10.21(5).

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 6330C**, IAB 6/1/22, effective 7/6/22]

657—10.15 Reserved.

657—10.16(124) Receipt and disbursement of controlled substances. Each transfer of a controlled substance between two registrants, to include a transfer between two separately registered locations regardless of any common ownership, except as provided in subrule 10.16(2), shall require a record of the transaction. Each registrant shall maintain a copy of the record for at least two years from the date of the transfer. Records of the transfer of Schedule II controlled substances shall be created and maintained separately from records of the transfer of Schedules III through V controlled substances pursuant to rule 657—10.36(124,155A). Upon receipt of a controlled substance, the individual responsible for receiving the controlled substance shall date and sign the receipt record.

10.16(1) *Record.* The record, unless otherwise provided in these rules or pursuant to federal law, shall include the following:

a. The name of the substance.

b. The strength and dosage form of the substance.

c. The number of units or commercial containers acquired from other registrants, including the date of receipt and the name, address, and DEA registration number of the registrant from which the substances were acquired.

d. The number of units or commercial containers distributed to other registrants, including the date of distribution and the name, address, and DEA registration number of the registrant to which the substances were distributed.

e. The number of units or commercial containers disposed of in any other manner, including the date and manner of disposal and the name, address, and DEA registration number of the registrant to which the substances were distributed for disposal, if appropriate.

10.16(2) *Distribution of samples and other complimentary packages.* Complimentary packages and samples of controlled substances may be distributed to practitioners pursuant to federal and state law only if the person distributing the items provides to the practitioner a record that contains the information found in this subrule. The individual responsible for receiving the controlled substances shall sign and date the record.

a. The name, address, and DEA registration number of the supplier.

b. The name, address, and DEA registration number of the practitioner.

c. The name, strength, dosage form, and quantity of the specific controlled substances delivered.

d. The date of delivery.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.17(124) Ordering or distributing Schedule I or II controlled substances. A registrant authorized to order or distribute Schedule I or II controlled substances shall do so only pursuant to and in compliance with DEA regulations via a DEA Form 222 or via the DEA Controlled Substances Ordering System (CSOS).
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 5349C**, IAB 12/30/20, effective 2/3/21]

657—10.18(124) Schedule II perpetual inventory. Each registrant located in Iowa that maintains Schedule II controlled substances shall maintain a perpetual inventory system for all Schedule II controlled substances pursuant to this rule. All records relating to the perpetual inventory shall be maintained at the registered location and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record. The perpetual inventory shall accurately reflect the on-hand inventory of Schedule II substances, and the registrant is responsible for ensuring that the perpetual inventory record is accurate and matches the actual on-hand inventory at all times.

10.18(1) *Record format.* The perpetual inventory record may be maintained in a manual or an electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed.

10.18(2) *Information included.* The perpetual inventory record shall identify all receipts for and disbursements of Schedule II controlled substances by drug or by national drug code (NDC) number. The record shall be updated to identify each receipt, disbursement, and current balance of each individual drug or NDC number. The record shall also include incident reports and reconciliation records pursuant to subrules 10.18(3) and 10.18(4).

10.18(3) *Changes to a record.* If a perpetual inventory record is able to be changed, the individual making a change to the record shall complete an incident report documenting the change. The incident report shall identify the specific information that was changed including the information before and after the change, shall identify the individual making the change, and shall include the date and the reason the record was changed. If the electronic record system documents within the perpetual inventory record all of the information that must be included in an incident report, a separate report is not required.

10.18(4) *Reconciliation.* The registrant shall be responsible for reconciling or ensuring the completion of a reconciliation of the perpetual inventory balance with the physical inventory of all Schedule II controlled substances at least annually. Any discrepancies discovered during reconciliation shall be investigated and reported to the pharmacist in charge or responsible individual immediately but no later than one business day following the discovery. The registrant shall determine the need for further investigation, and significant losses shall be reported to the board pursuant to rule 657—10.21(124) and to the DEA pursuant to federal DEA regulations. Periodic reconciliation records shall be maintained and available for review and copying by the board or its authorized agents for a period of two years from the date of the record. The reconciliation process shall be completed using the following procedures or a combination thereof:

a. The individual responsible for a disbursement shall verify that the physical inventory matches the perpetual inventory following each transaction and documents that reconciliation in the perpetual inventory record. If controlled substances are maintained on the patient care unit, the nurse or other responsible licensed health care provider verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. If any Schedule II controlled substances in the registrant's current inventory have been disbursed and verified in this manner within the year and there are no discrepancies noted, no additional reconciliation action is required. A perpetual inventory record for a drug that has had no activity within the year shall be reconciled pursuant to paragraph 10.18(4)*"b."*

b. A physical count of each Schedule II controlled substance stocked by the registrant that has not been reconciled pursuant to paragraph 10.18(4)*"a"* shall be completed at least once each year, and that count shall be reconciled with the perpetual inventory record balance. The physical count and reconciliation may be completed over a period of time not to exceed one year in a manner that ensures

that the perpetual inventory and the physical inventory of Schedule II controlled substances are annually reconciled. The individual performing the reconciliation shall record the date, the time, the individual's initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 5349C**, IAB 12/30/20, effective 2/3/21; **ARC 6330C**, IAB 6/1/22, effective 7/6/22]

657—10.19(124) Physical count and record of inventory. Each registrant shall be responsible for taking a complete and accurate inventory of all stocks of controlled substances under the control of the registrant pursuant to this rule. The responsible individual may delegate the actual taking of any inventory.

10.19(1) *Record and procedure.* Each inventory record, except the periodic count and reconciliation required pursuant to subrule 10.18(4), shall comply with the requirements of this subrule and shall be maintained for a minimum of two years from the date of the inventory.

a. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date and at the time the inventory is taken.

b. Each inventory shall be maintained in a handwritten, typewritten, or electronically printed form at the registered location. An inventory of Schedule II controlled substances shall be maintained separately from an inventory of all other controlled substances.

c. Controlled substances shall be deemed to be on hand if they are in the possession of or under the control of the registrant. Controlled substances on hand shall include prescriptions prepared for dispensing to a patient but not yet delivered to the patient, substances maintained in emergency medical service programs, care facility or hospice emergency supplies, outdated or adulterated substances pending destruction, and substances stored in a warehouse on behalf of the registrant. Controlled substances obtained through an authorized collection program for the purpose of disposal shall not be examined, inspected, counted, sorted, inventoried, or otherwise handled.

d. A separate inventory shall be made for each registered location and for each independent activity registered except as otherwise provided under federal law.

e. The inventory shall be taken either prior to opening or following the close of business on the inventory date, and the inventory record shall identify either opening or close of business.

f. The inventory record, unless otherwise provided under federal law, shall include the following information:

(1) The name of the substance.

(2) The strength and dosage form of the substance.

(3) The quantity of the substance, which shall be an exact count or measure of the substance and may not be an estimated count or measure, except for liquid products packaged in nonincremented containers, which may be estimated to the nearest one-fourth container.

(4) Information required of authorized collection programs pursuant to federal regulations for such collection programs.

(5) The signature of the person or persons responsible for taking the inventory.

(6) The date and time (opening or closing) of the inventory.

10.19(2) *Initial inventory.* A new registrant shall take an inventory of all stocks of controlled substances on hand on the date the new registrant first engages in the manufacture, distribution, storage, or dispensing of controlled substances. If the registrant commences business or the registered activity with no controlled substances on hand, the initial inventory shall record that fact.

10.19(3) *Annual inventory.* After the initial inventory is taken, a registrant shall take a new inventory of all stocks of controlled substances on hand at least annually. The annual inventory may be taken on any date that is within 372 days after the date of the previous annual inventory.

10.19(4) *Change of ownership, pharmacist in charge, or registered location.*

a. When there is a change in ownership or location for a registration, an inventory shall be taken of all controlled substances in compliance with subrule 10.19(1). The inventory shall be taken following the close of business on the last day under terminating ownership or at the location being vacated. The

inventory shall serve as the ending inventory for the terminating owner or location being vacated, as well as a record of the beginning inventory for the new owner or location.

b. When there is a change of pharmacist in charge, including when the incoming pharmacist in charge is temporary or interim pursuant to 657—paragraph 8.35(6)*"d,"* an inventory shall be taken of all controlled substances in compliance with subrule 10.19(1). An inventory shall be taken following the close of business on the last day of duty of the outgoing pharmacist in charge. The inventory may serve as the beginning inventory for the incoming pharmacist in charge, unless the incoming pharmacist in charge did not immediately assume the duties of pharmacist in charge following the outgoing pharmacist in charge. Any lapse in time between the outgoing pharmacist in charge and the incoming pharmacist in charge shall cause an inventory to be taken prior to the opening of business on the first day of duty of the incoming pharmacist in charge. An inventory count shall not be required in the case of an interim pharmacist in charge if the pharmacy maintains perpetual inventory logs for all controlled substances pursuant to rule 657—10.20(124).

10.19(5) *Discontinuing registered activity.* A registrant shall take an inventory of controlled substances at the close of business the last day the registrant is engaged in registered activities. If the registrant is selling or transferring the remaining controlled substances to another registrant, this inventory shall serve as the ending inventory for the registrant discontinuing business as well as a record of additional or starting inventory for the registrant to which the substances are transferred.

10.19(6) *New or rescheduled controlled substances.* On the effective date of the addition of a previously noncontrolled substance to any schedule of controlled substances or the rescheduling of a previously controlled substance to another schedule, any registrant who possesses the newly scheduled or rescheduled controlled substance shall take an inventory of all stocks of the substance on hand. That inventory record shall be maintained with the most recent controlled substances inventory record. Thereafter, the controlled substance shall be included in the appropriate schedule of each inventory made by the registrant.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 6330C**, IAB 6/1/22, effective 7/6/22]

657—10.20(124) Schedule III through V accountability. A registrant shall ensure accountability of Schedule III through V controlled substances through one or more of the measures identified herein.

1. Perpetual inventory log, which may be maintained by electronic means, so long as the system complies with the perpetual inventory requirements in rule 657—10.18(124).
2. Documented audit and reconciliation of all controlled substances every six months.
3. Routine documented cycle counts of substances, so long as all controlled substances are counted every 90 days and identified discrepancies are investigated and documented.
4. Other measure preapproved by the board.

[**ARC 6330C**, IAB 6/1/22, effective 7/6/22]

657—10.21(124) Report of theft or loss. A registrant shall report to the board and the DEA any theft or significant loss of controlled substances when the loss is attributable to other than inadvertent error. Thefts or other losses of controlled substances shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them.

10.21(1) *Immediate notice to board.* If the theft was committed by a registrant or licensee of the board, or if there is reason to believe that the theft was committed by a registrant or licensee of the board, the registrant from which the controlled substances were stolen shall notify the board immediately upon discovery of the theft and shall identify to the board the registrant or licensee suspected of the theft.

10.21(2) *Immediate notice to DEA.* A registrant shall deliver notice, immediately upon discovery of a reportable theft or loss of controlled substances, to the Des Moines DEA field office via telephone, facsimile, or a brief written message explaining the circumstances of the theft or loss.

10.21(3) *Timely report submission.* Within 14 calendar days of discovery of the theft or loss, a registrant shall submit directly to the DEA a Form 106 or alternate required form via the DEA website at www.deadiversion.usdoj.gov/. A copy of the report that was completed and submitted to the DEA shall be immediately submitted to the board via facsimile, email attachment, or personal or commercial delivery.

10.21(4) *Record maintained.* A copy of the report shall be maintained in the registrant's files for a minimum of two years following the date the report was completed.

10.21(5) *Action plan following loss.* Within seven days following the report of theft or loss, a registrant shall develop and initiate implementation of an action plan to address the conditions which contributed to the theft or loss. The action plan shall include any directives, including, but not limited to, inventory counts, audits, and perpetual inventory counts provided by a board compliance officer.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 6330C**, IAB 6/1/22, effective 7/6/22]

657—10.22(124) Disposal of registrant stock. A registrant shall dispose of controlled substances pursuant to the requirements of this rule. Disposal records shall be maintained by the registrant for at least two years from the date of the record.

10.22(1) *Registrant stock supply.* Controlled substances shall be removed from current inventory and disposed of by one of the following procedures.

a. The registrant shall utilize the services of a DEA-registered and Iowa-licensed reverse distributor.

b. The board may authorize and instruct the registrant to dispose of the controlled substances in one of the following manners:

(1) By delivery to an agent of the board or to the board office.

(2) By destruction of the drugs in the presence of a board officer, agent, inspector, or other authorized individual.

(3) By such other means as the board may determine to ensure that drugs do not become available to unauthorized persons.

10.22(2) *Waste resulting from administration or compounding.* Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant's stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant, a certified paramedic, or a pharmacist in witness of one other licensed health care provider or a registered pharmacy technician 18 years of age or older pursuant to this subrule. A written record of the wastage shall be made and maintained by the registrant for a minimum of two years following the wastage. The record shall include the following:

a. The controlled substance wasted.

b. The date of wastage.

c. The quantity or estimated quantity of the wasted controlled substance.

d. The source of the controlled substance, including identification of the patient to whom the substance was administered or the drug compounding process utilizing the controlled substance.

e. The reason for the waste.

f. The signatures of both individuals involved in the wastage.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.23(124) Disposal of previously dispensed controlled substances.

10.23(1) *Registrant disposal.* Except as provided in 657—Chapter 23 for care facilities, a registrant may not dispose of previously dispensed controlled substances unless the registrant has modified its registration with DEA to administer an authorized collection program. A registrant shall not take possession of a previously dispensed controlled substance except for reuse for the same patient or except as provided in paragraph 10.23(2)*"b."*

10.23(2) *Hospice disposal.*

a. An employee of a hospice program, acting within the scope of employment, may dispose of a controlled substance of a hospice program patient following the death of the patient or the expiration of the controlled substance pursuant to and in compliance with federal law.

b. A physician of a hospice program patient may dispose of a patient's controlled substance which is no longer required due to a change in the patient's care plan.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.24(124,126,155A) Prescription requirements. All prescriptions for controlled substances shall be dated as of, and signed on, the day issued. Controlled substances prescriptions shall be valid for six months following date of issue. A prescription for a Schedule III, IV, or V controlled substance may include authorization to refill the prescription no more than five times within the six months following date of issue. A prescription for a Schedule II controlled substance shall not be refilled. Beginning January 1, 2020, all prescriptions for controlled substances shall be transmitted electronically to a pharmacy pursuant to rule 657—21.6(124,155A), except as provided in rule 657—21.8(124,155A).

10.24(1) *Form of prescription.* All prescriptions for controlled substances shall bear the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; and the name, address, and DEA registration number of the prescriber. All prescriptions for controlled substances issued by individual prescribers shall include the legibly preprinted, typed, or hand-printed name of the prescriber as well as the prescriber's written or electronic signature. A prescription for a controlled substance issued prior to January 1, 2020, or a prescription for a controlled substance that is exempt from the electronic prescription mandate pursuant to rule 657—21.8(124,155A), may be transmitted via nonelectronic methods as described in this rule.

a. When an oral order is not permitted, or when a prescriber is unable to prepare and transmit an electronic prescription in compliance with DEA requirements for electronic prescriptions, prescriptions shall be written with ink, indelible pencil, or typed print and shall be manually signed by the prescriber. If the prescriber utilizes an electronic prescription application that meets DEA requirements for electronic prescriptions, the prescriber may electronically prepare and transmit a prescription for a controlled substance to a pharmacy that utilizes a pharmacy prescription application that meets DEA requirements for electronic prescriptions.

b. A prescriber's agent may prepare a prescription for the review, authorization, and manual or electronic signature of the prescriber, but the prescribing practitioner is responsible for the accuracy, completeness, and validity of the prescription.

c. An electronic prescription for a controlled substance shall not be transmitted to a pharmacy except by the prescriber in compliance with DEA regulations.

d. A prescriber shall securely maintain the unique authentication credentials issued to the prescriber for utilization of the electronic prescription application and authentication of the prescriber's electronic signature. Unique authentication credentials issued to any individual shall not be shared with or disclosed to any other prescriber, agent, or individual.

e. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this rule.

10.24(2) *Verification by pharmacist.*

a. The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in each case when a written or oral prescription for a Schedule II controlled substance is presented for filling and neither the prescribing individual practitioner issuing the prescription nor the patient or patient's agent is known to the pharmacist. The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in any case when the pharmacist questions the validity of, including the legitimate medical purpose for, the prescription. The pharmacist is required to record the manner by which the prescription was verified and include the pharmacist's name or unique identifier.

b. A pharmacist who receives a written, oral, or facsimile prescription shall not be required to verify that the prescription is subject to an exception to the electronic prescription mandate provided in rule 657—21.8(124,155A) and may dispense a prescription drug pursuant to an otherwise valid written, oral, or facsimile prescription pursuant to this rule.

10.24(3) *Intern, resident, foreign physician.* An intern, resident, or foreign physician exempt from registration pursuant to subrule 10.8(5) shall include on all prescriptions issued the hospital's registration number and the special internal code number assigned by the hospital in lieu of the prescriber's registration number required by this rule. Each prescription shall include the stamped or legibly printed name of the prescribing intern, resident, or foreign physician as well as the prescriber's signature.

10.24(4) *Valid prescriber/patient relationship.* Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or to oversee the patient's use of the controlled substance, a prescription shall lose its validity. A prescriber/patient relationship shall be deemed broken when the prescriber dies, retires, or moves out of the local service area or when the prescriber's authority to prescribe is suspended, revoked, or otherwise modified to exclude authority for the schedule in which the prescribed substance is listed. The pharmacist, upon becoming aware of the situation, shall cancel the prescription and any remaining refills. However, the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

10.24(5) *Facsimile transmission of a controlled substance prescription.* With the exception of an authorization for emergency dispensing as provided in rule 657—10.26(124), a prescription for a controlled substance in Schedules II, III, IV and V may be transmitted via facsimile from a prescriber to a pharmacy only as provided in rule 657—21.7(124,155A).

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4580C**, IAB 7/31/19, effective 9/4/19]

657—10.25(124) Dispensing records. Each registrant shall create a record of controlled substances dispensed to a patient or research subject.

10.25(1) *Record maintained and available.* The record shall be maintained for two years from the date of dispensing and be available for inspection and copying by the board or its authorized agents.

10.25(2) *Record contents.* The record shall include the following information:

a. The name and address of the person to whom dispensed.

b. The date of dispensing.

c. The name or NDC number, strength, dosage form, and quantity of the substance dispensed.

d. The name of the prescriber, unless dispensed by the prescriber.

e. The unique identification of each technician, pharmacist, pharmacist-intern, prescriber, or prescriber's agent involved in dispensing.

f. The serial number or unique identification number of the prescription.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.26(124) Schedule II emergency prescriptions.

10.26(1) *Emergency situation defined.* For the purposes of authorizing an oral or facsimile transmission of a prescription for a Schedule II controlled substance listed in Iowa Code section 124.206, the term "emergency situation" means those situations in which the prescribing practitioner determines that all of the following apply:

a. Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user.

b. No appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance.

c. It is not reasonably possible for the prescribing practitioner to provide a manually signed written prescription to be presented to the pharmacy before the pharmacy dispenses the controlled substance, or the prescribing practitioner is unable to provide a DEA-compliant electronic prescription to the pharmacy before the pharmacy dispenses the controlled substance.

10.26(2) *Requirements of emergency prescription.* In the case of an emergency situation as defined in subrule 10.26(1), a pharmacist may dispense a controlled substance listed in Schedule II pursuant to a facsimile transmission or upon receiving oral authorization of a prescribing individual practitioner provided that:

a. The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner or a DEA-compliant electronic prescription.

b. If the pharmacist does not know the prescribing individual practitioner, the pharmacist shall make a reasonable effort to determine that the authorization came from an authorized prescriber. The

pharmacist shall record the manner by which the authorization was verified and include the pharmacist's name or unique identification.

c. The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the facsimile transmission or a written record of the oral transmission authorizing the emergency dispensing. A written record is not required to consist of a handwritten record and may be a printed facsimile or a print of a computer-generated record of the prescription if the printed record includes all of the required elements for the prescription. If the emergency prescription is transmitted by the practitioner's agent, the record shall include the first and last names and title of the individual who transmitted the prescription.

d. If the emergency prescription is transmitted via facsimile transmission, the means of transmission shall not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the written prescription, and the hard-copy record of the facsimile transmission shall not be obscured or rendered illegible due to such security features.

e. Within seven days after authorizing an emergency prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of rule 657—10.24(124,126,155A), the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the emergency order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the seven-day period. The written prescription shall be attached to and maintained with the temporary written record prepared pursuant to paragraph 10.26(2)*"c."*

f. The pharmacist shall notify the board and the DEA if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to so notify the board and the DEA, or failure of the prescribing individual to deliver the required written prescription as herein required, shall void the authority conferred by this subrule.

g. Pursuant to federal law and subrule 10.27(3), the pharmacist may fill a partial quantity of an emergency prescription so long as the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed and that the remaining portions are filled no later than 72 hours after the prescription is issued.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.27(124) Schedule II prescriptions—partial filling. The partial filling of a prescription for a controlled substance listed in Schedule II is permitted as provided in this rule and federal regulations.

10.27(1) *Insufficient supply on hand.* If the pharmacist is unable to supply the full quantity authorized in a prescription and makes a notation of the quantity supplied on the prescription record, a partial fill of the prescription is permitted. The remaining portion of the prescription must be filled within 72 hours of the first partial filling. If the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescriber. No further quantity may be supplied beyond 72 hours without a new prescription.

10.27(2) *Long-term care or terminally ill patient.* A prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units as provided by this subrule.

a. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient.

b. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient." For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate uniformly maintained and readily retrievable record, the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

c. The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

d. Information pertaining to current Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system pursuant to rule 657—21.5(124,155A).

10.27(3) *Patient or prescriber request.* At the request of the patient or prescriber, a prescription for a Schedule II controlled substance may be partially filled pursuant to this subrule and federal law. The total quantity dispensed in all partial fillings shall not exceed the total quantity prescribed. Except as provided in paragraph 10.26(2)*"g,"* the remaining portion of a prescription partially filled pursuant to this subrule may be filled within 30 days of the date the prescription was issued.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.28(124) Schedule II medication order. Schedule II controlled substances may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 3859C**, IAB 6/20/18, effective 7/25/18]

657—10.29(124) Schedule II—issuing multiple prescriptions. An individual prescriber may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance pursuant to the provisions and limitations of this rule.

10.29(1) *Refills prohibited.* The issuance of refills for a Schedule II controlled substance is prohibited. The use of multiple prescriptions for the dispensing of Schedule II controlled substances, pursuant to this rule, ensures that the prescriptions are treated as separate dispensing authorizations and not as refills of an original prescription.

10.29(2) *Legitimate medical purpose.* Each separate prescription issued pursuant to this rule shall be issued for a legitimate medical purpose by an individual prescriber acting in the usual course of the prescriber's professional practice.

10.29(3) *Dates and instructions.* Each prescription issued pursuant to this rule shall be dated as of and manually or electronically signed by the prescriber on the day the prescription is issued. Each separate prescription, other than the first prescription if that prescription is intended to be filled immediately, shall contain written instructions indicating the earliest date on which a pharmacist may fill each prescription.

10.29(4) *Authorized fill date unalterable.* Regardless of the provisions of rule 657—10.30(124), when a prescription contains instructions from the prescriber indicating that the prescription shall not be filled before a certain date, a pharmacist shall not fill the prescription before that date. The pharmacist shall not contact the prescriber for verbal authorization to fill the prescription before the fill date originally indicated by the prescriber pursuant to this rule.

10.29(5) *Number of prescriptions and authorized quantity.* An individual prescriber may issue for a patient as many separate prescriptions, to be filled sequentially pursuant to this rule, as the prescriber deems necessary to provide the patient with adequate medical care. The cumulative effect of the filling of each of these separate prescriptions shall result in the receipt by the patient of a quantity of the Schedule II controlled substance not exceeding a 90-day supply.

10.29(6) *Prescriber's discretion.* Nothing in this rule shall be construed as requiring or encouraging an individual prescriber to issue multiple prescriptions pursuant to this rule or to see the prescriber's patients once every 90 days when prescribing Schedule II controlled substances. An individual prescriber shall determine, based on sound medical judgment and in accordance with established medical standards, how often to see patients and whether it is appropriate to issue multiple prescriptions pursuant to this rule.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4580C**, IAB 7/31/19, effective 9/4/19]

657—10.30(124) Schedule II—changes to a prescription. With appropriate verification, a pharmacist may add information provided by the patient or patient's agent, such as the patient's address, to a Schedule II controlled substance prescription.

10.30(1) *Changes prohibited.* A pharmacist shall never change the patient's name, the controlled substance prescribed except for generic substitution, or the name or signature of the prescriber.

10.30(2) *Changes authorized.* After consultation with the prescriber or the prescriber's agent and documentation of such consultation, a pharmacist may change or add the following information on a Schedule II controlled substance prescription:

a. The drug strength.
b. The dosage form.
c. The drug quantity.
d. The directions for use.
e. The date the prescription was issued.
f. The prescriber's address or DEA registration number.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 5346C**, IAB 12/30/20, effective 2/3/21]

657—10.31 Reserved.

657—10.32(124) Schedule III, IV, or V prescription. No prescription for a controlled substance listed in Schedule III, IV, or V shall be filled or refilled more than six months after the date on which it was issued nor be refilled more than five times. Beginning January 1, 2020, all prescriptions for controlled substances shall be transmitted electronically to a pharmacy pursuant to rule 657—21.6(124,155A), except as provided in rule 657—21.8(124,155A).

10.32(1) *Record.* Each filling and refilling of a prescription shall be entered in a uniformly maintained and readily retrievable record in accordance with rule 657—10.25(124). If the pharmacist merely initials or affixes the pharmacist's unique identifier and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed.

10.32(2) *Oral refill authorization.* The prescribing practitioner may authorize additional refills of Schedule III, IV, or V controlled substances on the original prescription through an oral refill authorization transmitted to an authorized individual at the pharmacy provided the following conditions are met:

a. The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issuance of the original prescription.

b. The pharmacist, pharmacist-intern, or technician who obtains the oral authorization from the prescriber who issued the original prescription documents, on or with the original prescription, the date authorized, the quantity of each refill, the number of additional refills authorized, and the unique identification of the authorized individual.

c. The quantity of each additional refill is equal to or less than the quantity authorized for the initial filling of the original prescription.

d. The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five-refill, six-month limitation.

10.32(3) *Partial fills.* The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible provided that each partial fill is recorded in the same manner as a refill pursuant to subrule 10.32(1). The total quantity dispensed in all partial fills shall not exceed the total quantity prescribed.

10.32(4) *Medication order.* A Schedule III, IV, or V controlled substance may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4580C**, IAB 7/31/19, effective 9/4/19]

657—10.33(124,155A) Dispensing Schedule V controlled substances without a prescription. A controlled substance listed in Schedule V, which substance is not a prescription drug as determined under the federal Food, Drug, and Cosmetic Act, and excepting products containing ephedrine,

pseudoephedrine, or phenylpropanolamine, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.33(1) *Who may dispense.* Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

10.33(2) *Frequency and quantity.* Dispensing at retail to the same purchaser in any 48-hour period shall be limited to no more than one of the following quantities of a Schedule V controlled substance:

a. 240 cc (8 ounces) of any controlled substance containing opium.

b. 120 cc (4 ounces) of any other controlled substance.

c. 48 dosage units of any controlled substance containing opium.

d. 24 dosage units of any other controlled substance.

10.33(3) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.33(4) *Identification.* The pharmacist shall require every purchaser under this rule who is not known by the pharmacist to present a government-issued photo identification, including proof of age when appropriate.

10.33(5) *Record.* A bound record book (i.e., with pages sewn or glued to the spine) for dispensing of Schedule V controlled substances pursuant to this rule shall be maintained by the pharmacist. The book shall contain the name and address of each purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the substance to the purchaser.

10.33(6) *Prescription not required under other laws.* No other federal or state law or regulation requires a prescription prior to distributing or dispensing the Schedule V controlled substance.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.34(124) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription. A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by an authorized dispenser pursuant to 657—Chapter 100 to a purchaser at retail pursuant to the conditions of this rule.

10.34(1) *Who may dispense.* Dispensing shall be by an authorized dispenser pursuant to 657—Chapter 100. This subrule does not prohibit, after the dispenser has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by another pharmacy employee.

10.34(2) *Packaging of nonliquid forms.* A nonliquid form of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine includes gel caps. Nonliquid forms of these products to be sold pursuant to this rule shall be packaged either in blister packaging with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches.

10.34(3) *Frequency and quantity.* Dispensing without a prescription to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine, pseudoephedrine, or phenylpropanolamine; dispensing without a prescription to the same purchaser within a single calendar day shall not exceed 3,600 mg.

10.34(4) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.34(5) *Identification.* The dispenser shall require every purchaser under this rule to present a current government-issued photo identification, including proof of age when appropriate. The dispenser shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

10.34(6) *Record.* Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor’s office of drug control policy

pursuant to 657—Chapter 100. If the PTS is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

a. Alternate record contents. The alternate record shall contain the following:

(1) The name, address, and signature of the purchaser.

(2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.

(3) The date and time of the purchase.

(4) The name or unique identification of the dispenser who approved the dispensing of the product.

b. Alternate record format. The record shall be maintained using one of the following options:

(1) A hard-copy record.

(2) A record in the pharmacy's electronic prescription dispensing record-keeping system that is capable of producing a hard-copy printout of a record.

(3) A record in an electronic data collection system that captures each of the data elements required by this subrule and that is capable of producing a hard-copy printout of a record.

c. PTS records retrieval. Pursuant to 657—subrule 100.4(6), the pharmacy shall be able to produce a hard-copy printout of transactions recorded in the PTS by the pharmacy for one or more specific products for a specified period of time upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

10.34(7) *Notice required.* The pharmacy shall ensure that the following notice is provided to purchasers of ephedrine, pseudoephedrine, or phenylpropanolamine products and that the notice is displayed with or on the electronic signature device or is displayed in the dispensing area and visible to the public:

"Warning: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than $250,000 if an individual or $500,000 if an organization, imprisoned not more than five years, or both."

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4701C**, IAB 10/9/19, effective 11/13/19]

657—10.35 Reserved.

657—10.36(124,155A) Records. Every record required to be kept under this chapter or under Iowa Code chapter 124 shall be kept by the registrant and be available for inspection and copying by the board or its representative for at least two years from the date of such record except as otherwise required in these rules. Controlled substances records shall be maintained in a readily retrievable manner that establishes the receipt and distribution of all controlled substances. Original records more than 12 months old may be maintained in a secure remote storage area unless such remote storage is prohibited under federal law. If the secure storage area is not located within the same physical structure as the registrant, the records must be retrievable within 48 hours of a request by the board or its authorized agent.

10.36(1) *Schedule I and II records.* Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the registrant.

10.36(2) *Schedule III, IV, and V records.* Records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the required information is readily retrievable from the ordinary business records of the registrant.

10.36(3) *Date of record.* The date on which a controlled substance is actually received, imported, distributed, exported, disposed of, or otherwise transferred shall be used as the date of receipt, importation, distribution, exportation, disposal, or transfer.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.37 Reserved.

657—10.38(124) Revision of controlled substances schedules.

10.38(1) *Designation of new controlled substance.* The board may designate any new substance as a controlled substance to be included in any of the schedules in Iowa Code chapter 124 no sooner than 30 days following publication in the Federal Register of a final order so designating the substance under federal law. Designation of a new controlled substance under this subrule shall be temporary as provided in Iowa Code section 124.201(4).

10.38(2) *Objection to designation of a new controlled substance.* The board may object to the designation of any new substance as a controlled substance within 30 days following publication in the Federal Register of a final order so designating the substance under federal law. The board shall file objection to the designation of a substance as controlled, shall afford all interested parties an opportunity to be heard, and shall issue the board's decision on the new designation as provided in Iowa Code section 124.201(4).

10.38(3) *Cannabis-derived products.* If a cannabis-derived product or investigational product approved as a prescription drug medication by the United States Food and Drug Administration is added to, eliminated from or revised in the federal schedule of controlled substances by the DEA and notice of the addition, elimination or revision is given to the board, the board shall similarly add, eliminate or revise the prescription drug medication in the schedule of controlled substances. Such action by the board shall be immediately effective upon the date of publication of the final regulation containing the addition, elimination or revision in the Federal Register.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 3743C**, IAB 4/11/18, effective 5/16/18; **ARC 5346C**, IAB 12/30/20, effective 2/3/21]

657—10.39(124) Temporary designation of controlled substances.

10.39(1) Amend Iowa Code section 124.204(2) by adding the following new paragraphs:

bt. N-phenyl-N-(1-(2-phenylpropyl)piperidin-4-yl)propionamide. Other name: beta-methyl fentanyl.

bu. N-(1-phenethylpiperidin-4-yl)-N,3-diphenylpropanamide. Other names: beta-phenyl fentanyl, 3-phenylpropanoyl fentanyl.

bv. N-(1-(2-flourophenethyl)piperidin-4-yl)-N-(2-fluorophenyl)propionamide. Other name: 2'-Fluoro ortho-fluorofentanyl, 2'-fluoro 2-fluorofentanyl.

bw. N-(1-(4-methylphenethyl)piperidin-4-yl)-N-phenylacetamide. Other name: 4'-Methyl acetyl fentanyl.

bx. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide. Other names: ortho-Fluorbutyryl fentanyl, 2-fluorobutyryl fentanyl.

by. N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide. Other names: ortho-Methyl acetylfentanyl, 2-methyl acetylfentanyl.

bz. 2-methoxy-N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide. Other names: ortho-Methyl methoxyacetyl fentanyl, 2-methyl methoxyacetyl fentanyl.

ca. N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)propionamide. Other names: para-Methylfentanyl, 4-methylfentanyl.

cb. N-(1-phenethylpiperidin-4-yl)-N-phenylbenzamide. Other names: Phenyl fentanyl, benzoyl fentanyl.

cc. N-(1-phenethylpiperidin-4-yl)-N-phenylthiophene-2-carboxamide. Other names: Thiofuranyl fentanyl, 2-thiofuranyl fentanyl, thiophene fentanyl.

cd. Ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate. Other name: fentanyl carbamate.

ce. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)acrylamide. Other name: ortho-Fluoroacryl fentanyl.

cf. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide. Other name: ortho-Fluoroisobutyryl fentanyl.

cg. N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide. Other name: para-Fluoro furanyl fentanyl.

10.39(2) Amend Iowa Code section 124.204(9) by adding the following new paragraphs:

y. 2-(2-(4-butoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other name: Butonitazene.

z. 2-(2-(4-ethoxybenzyl)-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other names: Etodesnitazene; etazene.

aa. N,N-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other name: Flunitazene.

ab. N,N-diethyl-2-(2-(4-methoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other name: Metodesnitazene.

ac. N,N-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other name: Metonitazene.

ad. 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other names: N-pyrrolidino etonitazene; etonitazepyne.

ae. N,N-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. Other name: Protonitazene.

10.39(3) Amend Iowa Code section 124.206(2)*"a"* by rescinding and replacing the introductory text as follows:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, naldemedine, nalmefene, naloxegol, naloxone, 6beta-naltrexol, naltrexone, and samidorphan, and their respective salts, but including the following:

10.39(4) Amend Iowa Code section 124.210(6) by adding the following new paragraph:

n. Serdexmethylphenidate.

10.39(5) Amend Iowa Code section 124.212(5) by adding the following new paragraph:

g. Ganaxolone (3alpha-hydroxy-3beta-methyl-5alpha-pregnan-20-one).

10.39(6) Amend Iowa Code section 124.204(4) by adding the following new paragraphs:

cl. 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one. Other names: methoxetamine, MXE.

cm. 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)butan-1-one. Other names: eutylone, bk-EBDB.

10.39(7) Amend Iowa Code section 124.204(6) by adding the following new paragraphs:

*j.*Amineptine (7-[(10,11-dihydro-5H-dibenzo[alpha,delta]cyclohepten-5-yl)amino]heptanoic acid).

*k.*Mesocarb (N-phenyl-N'-(3-(1-phenylpropan-2-yl)-1,2,3-oxadiazol-3-ium-5-yl)carbamimidate).

*l.*Methiopropamine (N-methyl-1-(thiophen-2-yl)propan-2-amine).

10.39(8) Amend Iowa Code section 124.210(3) by adding the following new paragraph:

bg. Daridorexant.

10.39(9) Amend Iowa Code section 124.206(2)*"d"* by adding the following new subparagraph:

(3) [\18\F]FP-CIT.

10.39(10) Amend Iowa Code section 124.204(2) by adding the following new paragraph:

cn. 1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol. Other name: Zipeprol.

[**ARC 5914C**, IAB 9/22/21, effective 10/27/21; **ARC 6074C**, IAB 12/15/21, effective 1/19/22; **ARC 6255C**, IAB 3/23/22, effective 4/27/22; **ARC 6521C**, IAB 9/21/22, effective 10/26/22; **ARC 6689C**, IAB 11/30/22, effective 1/4/23; **ARC 6843C**, IAB 2/8/23, effective 3/15/23; **ARC 7026C**, IAB 5/31/23, effective 7/5/23; **ARC 7128C**, IAB 12/13/23, effective 1/17/24]

657—10.40(124) Excluded and exempt substances. The Iowa board of pharmacy hereby excludes from all schedules the current list of "Excluded Nonnarcotic Products" identified in Title 21, CFR Part 1308, Section 22. With the exception of listed butalbital products, the board hereby excludes from all schedules the current list of "Exempted Prescription Products" described in Title 21, CFR Part 1308, Section 32. Copies of such lists may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 4455C**, IAB 5/22/19, effective 6/26/19]

657—10.41(124) Anabolic steroid defined. Anabolic steroid, as defined in Iowa Code section 126.2(2), includes any substance identified as such in Iowa Code section 124.208(6) or 126.2(2).
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.42(124B) Additional precursor substances. Rescinded **ARC 5346C**, IAB 12/30/20, effective 2/3/21.

657—10.43(124) Reporting discipline and criminal convictions. A registrant shall provide written notice to the board of any disciplinary or enforcement action imposed by any licensing or regulatory authority on any license or registration held by the registrant no later than 30 days after the final action. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. A registrant shall provide written notice to the board of any criminal conviction of the registrant or of any owner that is related to the operation of the registered location no later than 30 days after the conviction. The term criminal conviction includes instances when the judgment of conviction or sentence is deferred.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.44(124) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a registration for any of the following:

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulations promulgated under the Act.
2. Any conviction of a crime related to controlled substances committed by the registrant, or if the registrant is an association, joint stock company, partnership, or corporation, by any managing officer.
3. Refusing access to the registered location or registrant records to an agent of the board for the purpose of conducting an inspection or investigation.
4. Failure to maintain registration pursuant to 657—Chapter 10.
5. Any violation of Iowa Code chapter 124, 124B, 126, 155A, or 205, or any rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 3857C**, IAB 6/20/18, effective 7/25/18]

These rules are intended to implement Iowa Code sections 124.201, 124.301 to 124.308, 124.402, 124.403, 124.501, 126.2, 126.11, 147.88, 155A.13, 155A.17, 155A.26, 155A.37, and 205.3.

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◊ Two or more ARCs

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CHAPTER 12
PRECURSOR SUBSTANCES

657—12.1(124B) Precursor substance identified. For the purpose of this chapter, precursor substance includes all substances identified in Iowa Code section 124B.2. Additional precursor substances may be identified by listing in this rule.

12.1(1) Amend Iowa Code section 124B.2(1) by adding the following new paragraphs:

ah. Methyl alpha-phenylacetoacetate (other names: MAPA; methyl 3-oxo-2-phenylbutanoate) and its optical isomers.

ai. 1-boc-4-AP (tert-butyl 4-(phenylamino)piperidine-1-carboxylate) and its salts.

aj. 4-piperidone (piperidin-4-one), its acetals, its amides, its carbamates, its salts, and salts of its acetals, its amides, and its carbamates, and any combination thereof, whenever the existence of such is possible.

12.1(2) Reserved.

[**ARC 5346C**, IAB 12/30/20, effective 2/3/21; **ARC 6074C**, IAB 12/15/21, effective 1/19/22; **ARC 6418C**, IAB 7/27/22, effective 8/31/22; **ARC 7026C**, IAB 5/31/23, effective 7/5/23; **ARC 7128C**, IAB 12/13/23, effective 1/17/24]

657—12.2(124B) Reports required. Except as provided in rule 657—12.4(124B) or 12.5(124B), the following reports shall be filed with the board on forms provided or approved by the board. Copies of reports submitted pursuant to this rule shall be maintained for two years following the date of the report.

12.2(1) *Delivery in Iowa.* Any manufacturer, retailer, or other person who sells, transfers, or otherwise furnishes a precursor substance to anyone within this state shall report the transaction to the board no less than 21 days prior to delivery of the substance.

12.2(2) *Receipt from out-of-state source.* Any vendor, recipient, or other person who receives a precursor substance from a source outside the state shall submit to the board a report of the transaction no more than 14 days following receipt of the substance.

12.2(3) *Missing quantity.* Any vendor, recipient, or other person who is authorized to possess precursor substances in this state shall report to the board within seven days of discovering either of the following occurrences:

a. Loss or theft of a precursor substance.

b. A difference between the amount of a precursor substance shipped and the amount of a precursor substance received.

657—12.3(124B) Form of reports. All reports shall be on forms provided by the board except as provided in rule 657—12.4(124B). The following minimum information shall be completed for each required report.

12.3(1) *Delivery.* Each form that reports the sale, transfer, or other furnishing of a precursor substance shall contain the following information:

a. Name of substance;

b. Quantity of substance;

c. Date sold, transferred, or furnished;

d. Name and address of business or person selling, transferring, or furnishing the substance;

e. The signature of the person or the signature of an officer, authorized agent, or authorized employee of the business selling, transferring, or furnishing the substance;

f. Name, address, and identification information of the person or business purchasing or receiving the substance.

12.3(2) *Receipt.* Each form that reports the receipt of a precursor substance shall contain the following information:

a. Name of substance;

b. Quantity of substance;

c. Date received;

d. Name and address of person or business receiving the substance;

e. The signature of the person or the signature of an officer, authorized agent, or authorized employee of a business receiving the substance;

f. Name and address of the person or business selling, transferring, or furnishing the substance.

12.3(3) *Theft or loss.* Each form that reports a missing quantity of a precursor substance shall contain the following information:

a. Name of missing substance;

b. Quantity of substance missing;

c. Date on which the substance was discovered to be missing;

d. Name and address of the person or business reporting the missing quantity;

e. The permit number of the person or business reporting the missing quantity, if applicable;

f. The signature of the person or an officer, authorized agent, or authorized employee of the business reporting the missing quantity;

g. The name and address of the person who transported the precursor substance and the date of shipment, if applicable.

657—12.4(124B) Monthly reporting option.

12.4(1) *Regular repeated deliveries.* Vendors who regularly transfer the same precursor substance to the same recipient may apply to the board for authorization to submit the report of those transactions on a monthly basis. Requests for monthly reporting authorization must be received at the board office at least 21 days prior to the board meeting at which the request will be considered. The board will review each request to determine if the requirements of Iowa Code chapter 124B are met and will notify the vendor of its decision and the reporting format that will be authorized.

12.4(2) *Computer-generated reports.* Vendors may also petition the board to accept reports on a computer-generated basis. If approved, reports may be furnished in hard copy or in board-approved data storage format. The vendor will be responsible for the accuracy of all reports and the prompt correction of any data entry or transmission errors.

12.4(3) *Authorization rescinded at board's discretion.* Authorization to report monthly or to use computer-generated reporting may be rescinded at the board's discretion and with 30 days' advance notice.

657—12.5(124B) Exemptions. The following are exempt from the reporting requirements of subrules 12.2(1), 12.2(2), 12.3(1), and 12.3(2) and the identification requirements of rule 657—12.6(124B):

1. A licensed pharmacist or other person authorized under Iowa Code chapter 155A to sell or furnish a precursor substance upon the prescription of a practitioner.

2. A practitioner who administers or furnishes a precursor substance to a patient.

3. A manufacturer, wholesaler, retailer, or person who holds a permit issued by the board and who sells, transfers, or otherwise furnishes a precursor substance to a practitioner or pharmacy as defined in Iowa Code section 155A.3.

4. Any retailer or person who sells, transfers, furnishes, or receives a drug containing ephedrine, phenylpropanolamine, or pseudoephedrine or a cosmetic containing a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription in accordance with Iowa Code chapter 126.

657—12.6(124B) Identification of purchaser or other recipient. Prior to selling, transferring, or otherwise furnishing in this state any precursor substance as defined in rule 657—12.1(124B), a vendor shall require appropriate identification of any purchaser or other recipient. Letters and other documentation required by this rule shall be maintained for two years following delivery.

12.6(1) *Face-to-face transactions.* Prior to furnishing any precursor substance in any face-to-face transaction, a vendor shall require and document all of the following:

a. A valid driver's license or other state-issued identification issued to the purchaser's representative. The identification shall contain the photograph and residential or mailing address, other than a post office box number, of the purchaser's representative.

b. The motor vehicle license number of the vehicle owned or operated by the purchaser or the purchaser's representative.

c. A letter of authorization from the purchaser. The letter shall include the purchaser's business license number and business address, a description that identifies how the substance will be used, the name of the purchaser's representative authorized to receive the substance, and the purchaser's signature. The purchaser's representative shall also sign the letter in the presence of the vendor and the vendor shall sign as a witness to the identification and signature of the purchaser's representative.

12.6(2) *Furnishing to a person via transaction not face to face.* Prior to furnishing any precursor substance to a person in a transaction that is not face to face, a vendor shall require a letter of authorization that includes all of the following:

a. The name of the person to whom the substance is to be delivered;

b. The person's residential or mailing address, other than a post office box number;

c. The person's residential telephone number, including area code;

d. The person's place of employment including employer's address and telephone number;

e. The person's date of birth;

f. The person's place of birth;

g. The person's social security number;

h. The person's signature;

i. A description that identifies how the substance will be used.

12.6(3) *Furnishing to a business via transaction not face to face.* Prior to furnishing any precursor substance to a business in a transaction that is not face to face, a vendor shall require a letter of authorization that includes all of the following:

a. The name of the business;

b. The business license number;

c. The business address and telephone number, including area code;

d. A description that identifies how the substance will be used;

e. The signature of an officer, authorized agent, or authorized employee of the business;

f. The typed or printed name and title of the signatory.

657—12.7(124B) Permits. Persons or entities in this state that purchase, transfer, or otherwise receive a precursor substance as defined in rule 657—12.1(124B) from a source outside the state shall obtain a permit from the board. No person or entity required to obtain a permit shall receive a precursor substance from a source outside the state until an application for permit is approved and the board has issued a permit certificate. Permits shall expire on the last day of the calendar year in which the permit is issued.

12.7(1) *Applications.* An applicant shall submit a completed application and nonrefundable fee pursuant to subrule 12.7(2).

a. Each application shall include all requested information, unless the item is not applicable, in which case that fact shall be indicated.

b. Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

(1) If the applicant is an individual, signature shall be by that individual.

(2) If the applicant is a partnership, signature shall be by a partner.

(3) If the applicant is a corporation, corporate division, association, trust, or other entity, signature shall be by the chief executive officer.

12.7(2) *Initial permit, renewal, and fees.* The fee for an initial permit or permit renewal shall be paid at the time that the application for the permit or permit renewal is submitted for filing. Payment shall be made in the form of a personal, business, certified, or cashier's check or money order made payable to the Iowa Board of Pharmacy when submitted with a written application or by acceptable debit or credit card when submitted with an online application. Payments made in the form of foreign currency or third-party endorsed checks will not be accepted.

a. Initial and renewal fees. For each initial permit or timely renewed permit, an applicant shall pay a fee of $180.

b. Late application. Failure to renew a permit prior to January 1 following the permit's expiration shall require payment of the renewal fee plus a $180 late payment fee.

c. Delinquent permit. If a permit is not renewed before its expiration date, the permit is delinquent and the permit holder may not receive a precursor substance from a source outside the state until the delinquent permit is renewed. A delinquent-permit holder that continues activities for which a permit is required may be subject to disciplinary sanctions pursuant to rule 657—36.6(147,155A,272C).

12.7(3) *Exemption from permit fee.* The requirement for permit fee is waived for federal, state, and local law enforcement agencies and analytical laboratories. Exemption from payment of permit fees as provided in this subrule does not relieve the agency or laboratory of any requirement to obtain a permit nor of any other requirements or duties prescribed by law.

12.7(4) *Exemption from permit.* A permit is not required for a vendor of a drug containing ephedrine, phenylpropanolamine, or pseudoephedrine or of a cosmetic that contains a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished either over the counter without a prescription pursuant to Iowa Code chapter 126 or with a prescription pursuant to Iowa Code chapter 155A.

12.7(5) *Termination.* A permit issued to an individual shall terminate upon the death of the individual. A permit issued to an individual or business shall terminate when the individual or business ceases legal existence, discontinues business, or discontinues activities for which the permit was issued.
[**ARC 0504C**, IAB 12/12/12, effective 1/16/13; **ARC 6688C**, IAB 11/30/22, effective 1/4/23]

657—12.8(124B) Denial, modification, suspension, or revocation of permit. Pursuant to 657—Chapters 35 and 36, the board may deny, suspend, revoke, or modify any permit for any period of time it determines to be justified upon the facts of the case for any violation of this chapter or Iowa Code chapter 124B.

These rules are intended to implement Iowa Code chapter 124B.

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Rescinded **ARC 2657C**, IAB 8/3/16, effective 9/7/16

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Transferred to 701—Chapter 208, **ARC 6508C**, IAB 9/7/22, effective 10/12/22

CHAPTER 7
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[Prior to 12/17/86, Revenue Department[730]]

701—7.1(421,17A) Applicability and scope of rules. These rules are designed to implement the requirements of the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the tax laws of this state and other activities of the department. These rules shall govern the practice, procedure, and conduct of the informal proceedings, contested case proceedings, licensing, rule making, requests for waiver of rules, and declaratory orders involving taxation and other areas within the department's jurisdiction. The rules in this chapter apply to all informal proceedings, contested case proceedings, licensing, rule making, requests for waiver of rules, and declaratory orders pending or commenced on or after their effective date.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1545C**, IAB 7/23/14, effective 8/27/14; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.2(421,17A) Definitions. These definitions apply to this chapter, unless the text states otherwise:

"Act" means the Iowa administrative procedure Act.

"Agency" means each board, commission, department, officer, or other administrative office or unit of the state.

"Appeal" means a dispute of a notice of assessment, refund denial, or other department action which may culminate in a contested case proceeding. "Protest" has the same meaning as appeal.

"Appeals section" means the section of the department designated by the director to administer the informal stage of the appeals process and participate in contested case proceedings for appeals before the department.

"Clerk" means the clerk of the legal services and appeals division or the clerk's designee.

"Contested case" means the same as defined in Iowa Code section 17A.2(5). This term also includes any matter defined as a no factual dispute contested case as provided in Iowa Code section 17A.10A.

"Declaratory order" means an order issued pursuant to Iowa Code section 17A.9.

"Department" or *"IDR"* means the Iowa department of revenue.

"Department of inspections and appeals" means the state department created by Iowa Code chapter 10A.

"Director" means the director of the department or the director's authorized representative.

"Division of administrative hearings" means the division of the department of inspections and appeals responsible for holding contested case proceedings pursuant to Iowa Code chapter 10A.

"Entity" means any taxpayer other than an individual or sole proprietorship.

"GovConnectIowa" means the e-services portal of the department.

"Informal stage" means the procedures of the appeals process described in rule 701—7.11(17A).

"Intervene" means to file with the department a petition requesting that the petitioner be allowed to intervene in the proceedings for a declaratory order currently under the department's consideration.

"Issuance" means the date specified in the decision or order, the date of mailing of a decision, or order or date of delivery of the decision or order if service is by other means.

"Last-known address" means the last address associated with a taxpayer by tax type, as determined pursuant to rule 701—7.33(421).

"License" means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

"Licensing" means the department process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

"Motion" means the same as defined in Iowa Rule of Civil Procedure 1.431.

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including intervenors.

"Person" means any individual; estate; trust; fiduciary; partnership, including limited liability partnership; corporation; limited liability company; association; governmental subdivision; or public or private organization of any character or any other person covered by the Act other than an agency.

"Petition" means application for declaratory order, request to intervene in a declaratory order under consideration, or application for initiation of proceedings to adopt, amend or repeal a rule or document filed in licensing.

"Pleadings" means appeal, answer, reply or other similar document filed in a contested case proceeding, including contested cases involving no factual dispute.

"Presiding officer" means the person designated to preside over a proceeding involving the department. A presiding officer of a contested case involving the department will be either the director or a qualified administrative law judge appointed, pursuant to Iowa Code chapter 17A, by the division of administrative hearings established pursuant to Iowa Code section 10A.801. In cases in which the department is not a party, at the director's discretion, the presiding officer may be the director or the director's designee. The presiding officer of an administrative appeal is the director of the department.

"Proceeding" means informal, formal and contested case proceedings.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the director did not preside.

"Provision of law" means the same as defined in Iowa Code section 17A.2(10).

"Review unit" means the unit composed of the appeals section of the department and any of the attorney general's staff who have been assigned to review appeals filed by taxpayers.

"Rule" means the same as defined in Iowa Code section 17A.2(11).

"Small business" means the same as defined in Iowa Code section 17A.4A(8)*"a."*

"Taxpayer interview" means any in-person contact between an employee of the department and a taxpayer or a taxpayer's representative which has been initiated by a department employee.

"Taxpayer's representative" or *"authorized taxpayer's representative"* means an individual authorized to practice before the department under Iowa Code section 421.59; an individual who has been named as an authorized representative on a fiduciary return of income form filed under Iowa Code section 422.14, or a tax return filed under Iowa Code chapter 450, "Inheritance Tax," or chapter 450B, "Qualified Use Inheritance Tax"; or for proceedings before the department, any other individual the taxpayer designates who is named on a valid power of attorney if appearing on behalf of another.

Unless otherwise specifically stated, the terms used in these rules promulgated by the department shall have the meanings defined by the Act.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1545C**, IAB 7/23/14, effective 8/27/14; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.3(17A) How to submit an appeal, petition or related documents; service. Appeals, petitions, and other documents governed by this chapter may be filed electronically, by mail, or in person, in accordance with the limits described below. The principal office of the department in the Hoover State Office Building in Des Moines, Iowa, shall generally be open between the hours of 8 a.m. and 4:30 p.m. daily, except Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A.

7.3(1) *Ways to submit an appeal, petition, or related document.* Unless otherwise specified in another rule in this chapter, a person may submit an appeal, petition, related document, or document filed during an appeal or pending petition:

a. By submitting through GovConnectIowa. As of November 14, 2022, GovConnectIowa is available for filing petitions for declaratory order, petitions for rule making, and petitions for rule waiver for all tax types, but is only available for filing appeals for the following tax types: sales, consumers/retailers use, E911, withholding, motor fuel, hotel/motel, local option sales, automobile rental, water service excise, corporation income, S corporation income, partnership income, franchise, and tax credits and distributions associated with these tax types.

b. By email to idrhearings@iowa.gov.

c. By mail to Legal Services and Appeals Division, Iowa Department of Revenue, P.O. Box 14457, Des Moines, Iowa 50306-3457.

d. By hand delivery to the department's customer service desk in the Hoover State Office Building, First Floor, 1305 East Walnut Street, Des Moines, Iowa 50319, during regular business hours.

7.3(2) *Filings with the department of inspections and appeals and service upon the department during contested case proceedings.* All documents or papers required or permitted to be filed with an administrative law judge appointed by the division of administrative hearings to be a presiding officer in a contested case shall be filed with the department of inspections and appeals in accordance with rule 481—10.12(17A). All papers or documents required or permitted by this chapter to be filed with the department or the director and served upon the opposing party or other person in a contested case shall be served by ordinary mail unless another rule specifically refers to another method.

7.3(3) *Service by the department.* All notices or documents required or permitted by this chapter to be served on parties or persons by the department or presiding officer that are not currently pending before an administrative law judge shall be served by ordinary mail unless the taxpayer has elected to receive communications exclusively through GovConnectIowa, pursuant to rule 701—8.6(421). For taxpayers registered in GovConnectIowa, posting the document in the taxpayer's GovConnectIowa account constitutes service or notice of the document. For taxpayer representatives registered in GovConnectIowa, posting the document in the taxpayer representative's GovConnectIowa account constitutes service or notice of the document. For nonregistered taxpayers or nonregistered taxpayer representatives, documents will be served by ordinary mail. When this nonregistered mailing is required, however, the department may note on the docket the parties served and the method of service instead of filing a certificate of service. With respect to any notice, correspondence, or communication served electronically, response deadlines shall be calculated from the date the taxpayer is notified electronically of the correspondence or the item is mailed, whichever is earlier.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6551C**, IAB 10/5/22, effective 11/9/22; **ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.4(17A) Time requirements for filings.

7.4(1) *Computing time.* Time shall be computed in accordance with Iowa Code section 421.9A. For electronic submissions, in addition to the requirements described in Iowa Code section 421.9A, local time for the state of Iowa applies.

7.4(2) *Date of filing.* The date of filing for appeal requests, petitions, or other related documents shall be:

a. If sent electronically either through GovConnectIowa or as described on the department's website, determined by the date on which the electronic submission was completed.

b. If sent by regular mail, the date postmarked on the envelope sent to the department's principal office or, if the postmark is not available, on the date the appeal is stamped as received by the department.

c. If hand delivered, the date the appeal is stamped as received by the department.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6551C**, IAB 10/5/22, effective 11/9/22]

701—7.5(17A) Form and style of documents.

7.5(1) *Requirements applicable to all filings under this chapter.*

a. Signatures. Signatures must meet the requirements of 701—subrule 8.2(6). The signature shall constitute a certification that the signer has read the document; that, under penalty of perjury, the signer declares that to the best of the signer's knowledge and belief, the information contained in the document is true, correct, and complete; and that no statement contained in the document is misleading.

b. Citations. Citations may be italicized or underlined.

7.5(2) *Paper.* Any paper documents that are allowed or required to be submitted by this chapter must:

a. Be clear and legible.

b. Be on white paper.

c. Be on the applicable department appeal, application for reinstatement, or petition form available on the department's forms website tax.iowa.gov/forms under the category "Applications and Other" or, if not on the department's form, include a proper caption on the first page.

d. Include a signature.

e. Include copies as herein provided or as specified in other applicable rules.

7.5(3) *Email.* Any documents allowed or required to be filed by email under this chapter must be:

a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2), or

b. The body of an email that meets all of the requirements of subrules 7.5(1) and 7.5(2).

7.5(4) *GovConnectIowa.* Any documents allowed or required to be filed through GovConnectIowa under this chapter must be:

a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2) that is properly uploaded and properly submitted through GovConnectIowa.

b. Completed and submitted on the applicable form provided on GovConnectIowa.

This rule is intended to implement Iowa Code chapters 17A and 554D and sections 421.17 and 421.27A.

[**ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.6(17A,22,421,422) Authorized representatives—powers of attorney and representative certifications. No individual, including an attorney, accountant, or other representative, will be recognized as representing any taxpayer in regard to any claim, appeal, or other matter before the department or in any communication with, hearing before, or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization meeting the requirements of this rule and Iowa Code section 421.59. If a taxpayer wishes to allow the department to discuss otherwise confidential tax matters with an individual other than an authorized representative, without giving that individual authority to act on the taxpayer's behalf, the taxpayer must provide the department with written authorization to disclose such confidential tax information as provided in rule 701—5.7(17A,22,421,422).

7.6(1) *Individuals authorized to represent a taxpayer, generally; transfers of decision-making authority.*

a. If a taxpayer wishes to have any other individual or individuals act on the taxpayer's behalf in matters before the department, the taxpayer must file with the department an IDR power of attorney form, as described in subrule 7.6(5), authorizing that individual to do so. Even if an individual desires to represent a taxpayer only through correspondence with the department but does not intend to personally appear before the department in a hearing or conference, the taxpayer must submit an IDR power of attorney form appointing that individual to act on the taxpayer's behalf.

b. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file a representative certification form as described in subrule 7.6(6). Subrule 7.6(6) contains more information about individuals who may qualify as authorized representatives and the information required.

7.6(2) *Powers authorized.*

a. An IDR power of attorney or representative certification form, as applicable, is required by the department before an individual can perform one or more of the following acts on behalf of the taxpayer:

(1) To receive copies of any notices or documents sent by the department, its representatives, or its attorneys.

(2) To receive, but not to endorse and collect, checks made payable to the taxpayer in payment of any refund of Iowa taxes, penalties, or interest. Certain representatives with a valid representative certification form may be authorized to receive, endorse, and collect checks made payable to the taxpayer in payment of any refund of Iowa taxes, penalties, or interest.

(3) To execute waivers (including offers of waiver) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

(4) To execute consents extending the statutory period for assessment or collection of taxes.

(5) To fully represent the taxpayer in any hearing, determination, final or otherwise, or appeal. Subrule 7.6(8) contains additional requirements.

(6) To enter into any settlement or compromise with the department.

(7) To execute any release from liability required by the department as a prerequisite to divulging otherwise confidential information concerning the taxpayer.

(8) To authorize a third party as authorized representative or disclosure designee for the taxpayer.

b. The taxpayer may limit the scope of the authority of an authorized representative appointed via an IDR power of attorney form by expressly stating the limitations, if any, on the IDR power of attorney form submitted to the department. The taxpayer may not expand the scope of authority of an authorized representative beyond those powers authorized in this rule.

7.6(3) *Submitting a form.*

a. Submit separately. An IDR power of attorney form or representative certification may not be submitted as an attachment to a tax return except as provided by these rules. A power of attorney form or representative certification form must be submitted separately to the department in accordance with the submission instructions on the form(s).

b. Original or electronic forms accepted. The department may accept either an original form, an electronically scanned and transmitted form, or a copy of a form. A copy received by facsimile transmission (fax) or email may be accepted.

c. Timely submission. The form must be submitted within six months of the date of signature, or it will be considered invalid.

d. Appointment of a representative via another form. The department designates certain returns or other departmental forms on which a taxpayer may appoint a representative.

e. Signature. The signature on the form must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

7.6(4) *Communications with represented taxpayers.* Any notice or other written communication (or copy thereof) from the department provided to the representative, where required or permitted to be given to the taxpayer in any matter before the department, will be given to the taxpayer as well.

7.6(5) *Powers of attorney.* Individuals appointed by a taxpayer to represent the taxpayer must file an IDR power of attorney form.

a. Individuals who may execute an IDR power of attorney form. Individuals who are permitted to execute an IDR power of attorney form are as follows:

(1) Individual. In matters involving an individual taxpayer, an IDR power of attorney form must be signed by the individual or an authorized representative.

(2) Joint or combined returns. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return, each taxpayer must complete and submit the taxpayer's own IDR power of attorney form, even if the taxpayers are represented by the same appointee(s). In any matter concerning a joint return or married taxpayers who have elected to file separately on a combined return, in which the two taxpayers are not to be represented by the same representative(s), the authorized representative of one spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

b. Contents of the IDR power of attorney form. An IDR power of attorney form must contain the following information to be valid:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or any federal- or Iowa-issued tax identification number);

(3) Name, mailing address, and identification number of the representative (i.e., preparer's tax identification number (PTIN), SSN, centralized authorization file (CAF) number, or any federal- or Iowa-issued tax identification number) or an indication that an issued account number (IAN) is being requested;

(4) Description of the matter(s) for which representation is authorized, which may include:

1. The type of tax(es) involved or an indication that all tax types are within the scope of authority. If the tax type field is left blank, all tax types will be included within the scope of the representative's authority;

2. The specific year(s) or period(s) involved, or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date), or an indication that all tax types are within the scope of authority;

3. Iowa tax permit number;

(5) A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 7.6(2).

(6) A signature on the form, which must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

(7) Any other information required by the department.

c. Authorization period for an IDR power of attorney form.

(1) An IDR power of attorney form may not be used to authorize representation for tax periods that end more than three years after the date on which the IDR power of attorney form is signed by the taxpayer. The authority granted may concern an unlimited number of tax periods which have ended prior to the date on which the IDR power of attorney form is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax period section is left blank, all tax periods, including those ending up to three years in the future, are included.

(2) The authority granted by an IDR power of attorney form ceases to be effective for tax periods as defined in subparagraph 7.6(5)*"c"*(1) upon revocation by the taxpayer, incapacity of the taxpayer, death of the taxpayer, or withdrawal, death, or incapacity of the individual granted power of attorney authority.

d. Evaluation of documentation provided. The department will evaluate the IDR power of attorney form and any additional documentation to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

e. Revocation and withdrawal.

(1) Revocation by the taxpayer.

1. By written statement. By filing a statement of revocation with the department, a taxpayer may revoke authority granted by an IDR power of attorney form without authorizing a new representative. The statement of revocation must indicate that the authority of the previous representative is revoked and must be signed by the taxpayer. Also, the name and address of each representative whose authority is revoked must be listed (or a copy of the prior IDR power of attorney form must be attached). If the writing indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IDR power of attorney form or an entity representative form.

2. By filing a new IDR power of attorney form. Filing a new IDR power of attorney form for a particular tax type(s) and tax period(s) automatically revokes a previously granted power of attorney authority for that tax type(s) and tax period(s). For a previously designated authorized representative to remain as the taxpayer's authorized representative when a subsequent IDR power of attorney form is filed, the taxpayer must include the representative on the newly submitted IDR power of attorney form. This rule applies regardless of whether the power of attorney authority is authorized by an IDR power of attorney form or on a return as described in subrule 7.6(7). This subrule does not apply to entities appointed as authorized entity representatives under subrule 7.6(9).

(2) Withdrawal by the representative. By filing a statement with the department, a representative may withdraw from representation in a matter in which an IDR power of attorney form has been filed. The statement must be signed by the representative and must identify the name, identification number, and address of the taxpayer(s); the name, address and identification number of the representative withdrawing; and the matter(s) from which the representative is withdrawing. A representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired.

(3) Administrative revocation by the department. The department may administratively revoke a power of attorney or representative certification authority.

7.6(6) *Representative certification; durable and general powers of attorney.*

a. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file with the department a representative certification form prior to utilizing that authority with the department. Individuals authorized by an IDR power of attorney form are not required to file a representative certification form for themselves.

b. Contents of the representative certification form. The representative certification form must include the following information:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number relative to matters covered by the IDR power of attorney form);

(3) Name, mailing address, and identification number (i.e., SSN, CAF number, or any federal- or Iowa-issued tax identification number) of the representative. If the identification number is left blank, a new IAN will be assigned to the representative;

(4) Proof of authority must be included with the form as follows:

1. Durable power of attorney or general power of attorney other than an IDR power of attorney form: a copy of the power of attorney document;

2. Guardian, conservator, or custodian appointed by a court: documentation as required in Iowa Code section 421.59(2)*"a"*;

3. Receiver appointed pursuant to Iowa Code chapter 680: a copy of the relevant court order(s);

4. Individual holding one of the following titles within a corporation, association, partnership, or other entity:

- Officer/employee of corporation/association: affirmation of authority to act on behalf of the corporation or association on the form designated by the department;
- Designated partner authorized to act on behalf of a partnership: affirmation of authority to act on behalf of the partnership on the form designated by the department;
- Individual authorized to act on behalf of a limited liability company in tax matters: affirmation of authority to act on behalf of the limited liability company on the form designated by the department;

5. Licensed attorney appearing on behalf of the taxpayer or the taxpayer's estate in a court proceeding: a copy of the filed notice of appearance in the relevant court proceeding;

6. Parent or guardian of minor taxpayer: a copy of the return signed by the parent or guardian or proof of status as parent or guardian, such as birth certificate or equivalent document, stating parent and minor taxpayer's names, as well as the minor taxpayer's date of birth. By submitting a copy of a return signed by the parent or guardian, the parent or guardian will only have authority in relation to that return. Without other authorization, such as a court-ordered guardianship, a parent's right to access a minor taxpayer's account will cease when the minor taxpayer reaches majority;

7. Governmental representative: affirmation of authority to act on behalf of the government entity on the form designated by the department;

8. Executor or personal representative: a copy of the will or court order appointing the individual;

9. Trustee: a copy of the certificate of trust, trust document, or court order appointing the representative;

10. Successor of a very small estate under Iowa Code section 633.356(2): affirmation of authority to act on behalf of the estate on the form designated by the department;

(5) A signature of the representative on the form, which must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization;

(6) Any other information required by the department.

c. Evaluation of documentation provided. The department will evaluate documentation submitted in support of a representative certification to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party

claiming authority to act before the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

d. *Revocation.* A representative certification may be revoked in the following ways:

(1) By the representative being withdrawn, following procedures in subparagraph 7.6(5)*"e"*(2).

(2) By the taxpayer, following procedures in subparagraph 7.6(5)*"e"*(1).

(3) By another representative. An authorized representative properly appointed by a representative certification or an IDR power of attorney form may notify the department that an authorized representative no longer has authority to act on behalf of the taxpayer by filing a statement of revocation with the department. The notification statement must indicate the taxpayer's name, address, and identification, and that the authority of the former representative has ceased and must be signed by a current authorized representative. Also, the name and address of each representative who no longer has authority must be listed (or a copy of the prior representative certification form must be attached).

(4) Administrative revocation by the department, following procedures in paragraph 7.6(5)*"e."*

7.6(7) *Returns that may be used to grant power of attorney authority.* An IDR power of attorney form is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450.

7.6(8) *Individuals authorized to represent themselves or others in a contested case proceeding.* The right to represent oneself or others in connection with any contested case proceeding before the department or administrative hearings division shall be limited to the following classes of individuals, so long as such representation is not barred by another provision of law. Representatives must have a valid IDR power of attorney form or valid representative certification form on file with the department to represent others in a contested case proceeding. The right to represent a taxpayer before the department or the administrative hearings division does not confer the right to represent the taxpayer in a judicial proceeding.

a. Taxpayers who are natural persons representing themselves. One spouse may not represent the other in contested case proceedings, unless the spouse is acting in a capacity described in paragraphs 7.6(8)*"b"* to *"j"*;

b. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa;

c. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with the requirements for admission to practice before the courts of the state of Iowa pro hac vice;

d. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542;

e. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer. Attorneys who are acting in the capacity of a director or officer of a corporation must meet the requirements of paragraph 7.6(8)*"b"* or *"c"*;

f. Partners representing their partnership. Attorneys who are acting in the capacity of a partner must meet the requirements of paragraph 7.6(8)*"b"* or *"c"*;

g. Fiduciaries. Fiduciaries include trustees, receivers, guardians, personal representatives, administrators, and executors. For purposes of this rule, a fiduciary is considered to be the taxpayer and not a representative of the taxpayer;

h. Government officials authorized by law;

i. Enrolled agents, currently enrolled under 31 CFR §10.6 for practice before the Internal Revenue Service, representing a taxpayer in proceedings under division II of Iowa Code chapter 422; and

j. Conservators, guardians, or durable powers of attorney appointed to handle tax matters.

7.6(9) *Entities as authorized representatives.*

a. *Appointment.*

(1) A taxpayer may authorize an entity to act on its behalf in tax-related matters by following the procedures described in this subrule in a manner approved by the department. By appointing an authorized entity representative, the taxpayer consents to the authorized entity representative, and any individuals submitted to the department by the authorized entity representative, as described in paragraph 7.6(9)*"c,"* sending and receiving the taxpayer's information to and from the department and taking any other action described in these rules. By appointing an authorized entity representative,

the taxpayer understands that the authorized entity representative is solely responsible for maintaining an accurate list of individuals allowed to act on the taxpayer's behalf. The taxpayer agrees that any improper disclosure or use of the taxpayer's information by the entity or entity's current or former employees, agents, or contractors shall solely be the responsibility of the entity and the entity's employees, agents, or contractors. The department shall not be liable for any acts or omissions of the entity or the entity's employees, agents, or contractors.

(2) The taxpayer's consent must be in writing, in a form specified by the department, including a signature and date. The signature must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

b. Department approval of authorized entity representatives.

(1) The department will review authorized entity representative appointments.

(2) The department has the authority to approve, deny, or remove third-party access to any entity or individual employee upon review.

c. Duties of the authorized entity representative.

(1) The authorized entity representative shall be responsible for managing access for individual employees that it authorizes to act on behalf of the taxpayer in a manner defined by the department. The authorized entity representative shall provide the department a single point of contact for matters involving the entity's status as an approved entity representative.

(2) The authorized entity representative single point of contact must have a valid IA 2848 or representative certification form on file on behalf of the authorized entity representative.

(3) The authorized entity representative will provide information regarding each individual employee authorized to act on behalf of the taxpayer as determined by the department. This information shall be used to identify the individual employee when contacting the department. The authorized entity representative shall maintain with the department an accurate and up-to-date list of individual employees that the authorized entity representative has authorized to act on a taxpayer's behalf under this rule. The authorized entity representative shall remove any individuals from its list with the department as soon as an individual is no longer employed by the entity or is no longer authorized by the entity to act on behalf of a taxpayer. The authorized entity representative shall submit all information and changes to information to the department via GovConnectIowa.

(4) The authorized entity representative shall be responsible for the actions taken by its employees, agents, and contractors on behalf of the taxpayer.

(5) The authorized entity representative shall remain in good standing with the department.

d. Powers authorized. An authorized entity representative may be granted any or all of the powers described in subrule 7.6(2). The taxpayer may restrict the authorized entity representative as described therein and by tax type. If the tax type field is left blank, all tax types are included within the scope of the authorized entity representative's authority.

e. Contents of form. A valid IDR authorized entity representative form must contain the information specified in paragraph 7.6(5)*"b."*

f. Authorization period.

(1) An authorized entity representative may be used to authorize representation for an unlimited number of tax periods prior to or following the date on which the form is received by the department. If the tax period is left blank, all tax periods are included.

(2) At any time while the taxpayer has an effective authorized entity representative appointment filed with the department, the taxpayer consents to allowing the authorized entity representative and any individuals listed by the authorized entity representative, as described in paragraph 7.6(9)*"c,"* to send and receive the taxpayer's information to and from the department and take any other action described in these rules.

(3) The authority granted by an IDR power of attorney form ceases to be effective upon revocation by the taxpayer, or withdrawal or dissolution of the authorized entity representative. It is the sole responsibility of the taxpayer to revoke an authorized entity representative.

g. Revocation and withdrawal.

(1) Revocation by the taxpayer. Such appointment may be revoked by the taxpayer at any time, via GovConnectIowa or in writing to the department. The revocation must include the name and identification number of the taxpayer, the name of the representative entity, an indication of the wish to withdraw, and the taxpayer's dated signature. If the revocation indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IA 2848 or entity representative form.

(2) Withdrawal by the authorized entity representative. By filing a statement with the department, an authorized entity representative may withdraw from representation appointed under this subrule. The statement must be signed by the authorized entity representative single point of contact and must identify the name and address of the taxpayer(s) and the matter(s) from which the authorized entity representative is withdrawing. An authorized entity representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired. Such statement shall be signed by the authorized entity representative single point of contact.

(3) Administrative revocation by the department. The department may administratively revoke any entity representative authority.

[**ARC 5532C**, IAB 3/24/21, effective 4/28/21; **ARC 6582C**, IAB 10/5/22, effective 11/9/22; **ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.7(17A) Docket. Every matter coming within the purview of this chapter shall be assigned a docket number which shall be the official identification number of the matter for the purposes of identification. The parties will be notified of the docket number. The number shall be placed by the parties on all documents thereafter filed in the proceeding. After the transfer of a case to the division of administrative hearings for contested case proceedings, that division may assign another docket number to the case and, in that event, both docket numbers shall be placed by the parties on all documents thereafter filed in the proceeding.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.8(17A) Identifying details, requests for redaction.

7.8(1) *Information redacted by the department, subject to certain exceptions.* Prior to being made available for public inspection, the department shall redact from an appeal or contested case the information required to be redacted in Iowa Code sections 422.20(5) and 422.72(8). "Make available for public inspection" means disclosure to the public by the department pursuant to Iowa Code section 17A.3 or chapter 22.

7.8(2) *Process for requesting redaction of other details from a pleading, exhibit, attachment, motion, or written evidence.* If a taxpayer desires information contained in a record, other than the information described in Iowa Code sections 422.20(5)*"a"* and 422.72(8)*"a,"* to be redacted prior to public inspection, the taxpayer must file a motion and affidavit meeting the requirements below.

a. Process for filing a motion for redaction of other details during a contested case. Motions for redaction of other details from a pleading, exhibit, attachment, motion or written evidence filed after the notice of hearing is issued in a contested case must follow the requirements in subrule 7.17(5).

b. Process for filing a motion for redaction of other details prior to the commencement of a contested case. Motions for redaction of other details from a pleading, exhibit, attachment, motion or written evidence filed prior to a contested case must be filed with the clerk of the hearings section of the department. The motion must be filed separately from the appeal described in subrule 7.9(6).

c. Contents of motion. Motions filed under this rule, including those filed during contested cases, shall contain the following:

(1) The name of the person requesting redaction and the docket number of the proceeding.

(2) Clear and convincing evidence that the disclosure would reveal a trade secret or would constitute a clear, unwarranted invasion of personal privacy. Corporations, limited liability companies, other business entities (including but not limited to partnerships and joint ventures), and trusts do not have protectible personal privacy interests.

(3) An unredacted copy of the document containing the information at issue and also a copy of the document with the desired redaction made. If a copy of the document is not in the possession of the taxpayer, the motion must contain a precise description of the document in the possession of the department from which the redaction is sought and a precise description of the information to be redacted. If redaction is sought from more than one document, each document and the information sought to be redacted shall be listed in separate paragraphs.

(4) For each item for which redaction is requested, an explanation of the legal basis for the redaction requested, including an explanation of why the release of the information sought to be redacted is a clear, unwarranted invasion of personal privacy or a trade secret.

(5) An affidavit in support of redaction. The affidavit must:

1. Be sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying redaction, not merely the legal basis for redaction or conclusory allegations.

2. Contain a general and truthful statement that the information sought to be redacted is not available to the public from any source or combination of sources, direct or indirect, and a general statement that the release would serve no public purpose.

d. Burden of proof. The burden of showing that redaction is justified shall be on the movant. The burden is not carried by mere conclusory statements or allegations, for example, that the release of the material would be a clear, unwarranted invasion of personal privacy or that the material is a trade secret.

e. Contested case proceeding. That the information sought to be redacted is part of the pleadings, motions, evidence, and the record in a contested case proceeding otherwise open for public inspection and that the matter would otherwise constitute confidential tax information shall not be grounds for redaction.

7.8(3) *Process for requesting redaction of other details in a final order, decision, or ruling.* Motions to redact information from a final order, decision, or ruling cannot be made until the order is issued and must be made within 30 days of the date of the order, decision, or ruling. The taxpayer must follow the requirements in paragraph 7.9(2)*"c"* and subrule 7.17(5). The department shall have 30 days to respond to the motion from the date the department's representatives receive notice from the presiding officer, unless otherwise ordered by the presiding officer.

7.8(4) *Rulings.* Motions filed with the clerk of the hearings section will be ruled on by the director or may be referred by the director to an administrative law judge. Motions filed with the administrative law judge will be ruled on by the administrative law judge. In the case of motions before the director prior to contested case proceedings, the department may respond in writing to a motion on the request of the director or upon the initiative by department staff. Oral argument, including a hearing, may be held at the discretion of the presiding officer. The presiding officer may choose to close a hearing or other proceeding that may otherwise be open to the public due to the confidential nature of information covered by the motion during the pending motion.

7.8(5) *Limitation on motions.* If the motion or request is denied, the movant may not submit a motion to redact the same identifying details unless the movant is in possession of new information that may support the requested redaction(s) that the movant was not or could not have been aware of at the time of the original motion.

7.8(6) *Handling of the file while the motion is pending.* During the pendency of a motion, unless otherwise required or permitted by law, the department will treat the motion as if it has been granted and will not publicly release any information pursuant to Iowa Code chapter 22 or 17A sought to be kept confidential by the taxpayer.

This rule is intended to implement Iowa Code chapter 17A and sections 422.20(5) and 422.72(8).

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5932C**, IAB 10/6/21, effective 11/10/21; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.9(17A) Appeals. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, shall file an appeal, in writing, with the department within the time prescribed by the applicable statute or rule

for filing notice of application to the director for a hearing. The appeal must be filed as described in rule 701—7.3(17A).

7.9(1) *Deadlines.* The period for appealing department action relating to refund claims is the same statutory period as that for contesting an assessment. Failure to timely file a proper appeal will be construed as a waiver of opposition to the matter involved unless, on the director's own motion, pursuant to statutory authority, the powers of abatement or settlement are exercised. The review unit may seek dismissal of appeals which are not in the proper form as provided by this rule. See subrule 7.12(2) for dismissals.

7.9(2) *Appealing refund claims that have not been reviewed within six months.* If the department has not granted or denied a filed refund claim within six months of the filing of the claim, the refund claimant may file an appeal. Even though an appeal is so filed, the department is entitled to examine and inspect the refund claimant's records to verify the refund claim.

7.9(3) *Paying assessment in order to appeal refund claim denial.* Notwithstanding the above, the taxpayer who fails to timely appeal an assessment may contest the assessment by paying the whole assessed tax, interest, and penalty, and filing a refund claim within the time period provided by law for filing such claim. However, in the event that such assessment involves divisible taxes which are not timely appealed, namely, an assessment which is divisible into a tax on each transaction or event, the taxpayer may contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment attributable to that specific type of transaction would be canceled. Any such appeal filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. Thereafter, if the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file an appeal as authorized by this rule.

7.9(4) *Divisible taxes.* All of the taxes administered and collected by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, franchise tax, and statewide property tax. The following noninclusive examples illustrate the application of the divisible tax concept.

EXAMPLE A: As a responsible party, X is assessed withholding income taxes, penalty, and interest on eight employees. X fails to timely appeal the assessment. X contends that X is not a responsible party. If X is a responsible party, X is required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X may pay an amount of tax, penalty, and interest attributable to one employee for one month and file a refund claim within the time period provided by law since, if X is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B: Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely appeal the assessment. Y was billed monthly for electricity by the power company to which Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y may pay an amount of tax, penalty, and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since, if Y is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

7.9(5) *Who may be named in an appeal.* The appeal shall be brought in the name of the aggrieved taxpayer. The appeal may be filed by and in the name of the aggrieved taxpayer or by the authorized representative described in Iowa Code section 421.59(2), Iowa Code chapter 633B, or subrule 7.6(6) legally entitled to institute a proceeding on behalf of the person, or by an intervenor in contested case proceedings. In the event of a discrepancy between the name set forth in the appeal and the correct name, a statement of the reason for the discrepancy shall be set forth in the appeal.

7.9(6) *Form and content of the appeal.*

a. Department forms. Appeals may be filed using the form available on GovConnectIowa or the form available on the department's website, tax.iowa.gov/forms.

b. Manually created appeals. Persons who do not use GovConnectIowa or the form available on the department's website shall use the following format:

(1) The appeal shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	
(state taxpayer's name and address and	*	APPEAL
designate type of proceeding, e.g.,	*	Docket No. _____
income tax refund claim)	*	(filled in by Department)

(2) The appeal shall substantially state in separate numbered paragraphs the following:

1. Proper allegations showing:

- Date of department action, such as the notice of assessment, refund denial, etc.;
- Whether the taxpayer failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
- Whether the appeal involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;
- Copies of the documented department action, such as the notice of assessment, refund claim, and refund denial letter;
- Other items that the taxpayer wishes to bring to the attention of the department; and
- A request for attorney fees, if applicable.

2. The type of tax, the taxable period or periods involved, and the amount in controversy.

3. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

4. Reference to any particular statute or statutes and any rule or rules involved, if known.

5. Description of records or documents that were not available or were not presented to department personnel prior to the filing of the appeal, if any. Copies of any records or documents that were not previously presented to the department shall be provided.

6. Any other matters deemed relevant and not covered in the above paragraphs.

7. The desire of the taxpayer to expedite proceedings. Rule 701—7.13(17A,421) contains more details on expedited proceedings.

8. A statement setting forth the relief sought by the taxpayer.

9. The signature of the taxpayer or that of the authorized representative. If the appeal is signed by the taxpayer, include the address and telephone number of the taxpayer in the signature block. If the appeal is signed by an authorized representative, include the address and telephone number of the authorized representative in the signature block. Appeals submitted by an authorized representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department, or one should be included with the appeal.

c. Spouses. If an appeal involves an assessment or a refund denial to a married couple and both spouses intend to appeal, both spouses must sign the document as drafted under paragraph 7.9(6)*"a"* or *"b."* Appeals submitted by an authorized representative must include an executed IA 2848 power of attorney form or representative certification form, as applicable, for each spouse, unless an IA 2848 power of attorney form or representative certification form is on file with the department.

7.9(7) *Amendments.*

a. The taxpayer may amend the appeal at any time before a responsive pleading is filed. Amendments to the appeal after a responsive pleading has been filed may be allowed by the presiding officer with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

b. The department may request that the taxpayer amend the appeal for purposes of clarification or to comply with format requirements. If the taxpayer fails to amend the appeal within the time provided for in the department's request, the department may move to dismiss the appeal under paragraph 7.12(3)*"a."* Requests by the department to the taxpayer to amend the appeal after a responsive pleading has been filed may be allowed by the presiding officer with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

7.9(8) *Denial of renewal of vehicle registration or denial of issuance or renewal, or suspension, of a driver's license.*

a. A person who has had an application for renewal of vehicle registration denied, has been denied the issuance of a driver's license or the renewal of a driver's license, or has had a driver's license suspended may file an appeal with the clerk if the denial of the issuance or renewal or the suspension is because the person owes delinquent taxes.

b. The issues raised in an appeal by the person, which are limited to a mistake of fact, may include but are not limited to:

(1) The person has the same name as the obligor but is not the correct obligor;

(2) The amount in question has been paid; or

(3) The person has made arrangements with the department to pay the amount.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1303C**, IAB 2/5/14, effective 3/12/14; **ARC 2657C**, IAB 8/3/16, effective 9/7/16; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6582C**, IAB 10/5/22, effective 11/9/22; **ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.10(17A) Resolution of tax liability. In the event that a proper appeal has been filed as provided hereinafter, other department personnel, when authorized by the appeals section, shall have the authority to discuss the resolution of any matter in the appeal either with the taxpayer or the taxpayer's representative. The personnel shall report their activities in this regard to the appeals section, and the section shall be authorized to approve or reject any recommendations made by the appropriate personnel to resolve an appeal.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.11(17A,421) Informal stage of the appeals process. When an appeal is filed, the parties are encouraged to utilize the informal procedures described in this rule to reach a resolution between the parties without the necessity of initiating contested case proceedings. That resolution may be the granting of the appeal in full or in part, the denial of the appeal in full or in part, or an agreement to settle the matter. Unless, in accordance with rule 701—7.13(17A,421), the taxpayer demands a contested case proceeding or an expedited hearing is agreed to or the department waives informal procedures upon notification to the taxpayer, such informal procedures will be initiated as herein provided upon the filing of a proper appeal.

7.11(1) *Appeals section review.* After an appeal is filed, the review unit, subject to the control of the director or the division administrator of the legal services and appeals division, will:

a. Review and evaluate the validity of the appeal.

b. Determine the correct amount of tax owing or refund due.

c. Determine the best method of resolving the dispute between the taxpayer and the department.

d. Take further action regarding the appeal, including any additions and deletions to the audit, as may be warranted by the circumstances to resolve the appeal, including a request for an informal conference.

e. Determine whether the appeal complies with rule 701—7.9(17A) and request any amendments to the appeal or additional information.

7.11(2) *Determinations, conferences.* The review unit may concede any items contained in the appeal which it determines should not be controverted by the department. If the taxpayer has not waived informal procedures, the review unit may request that the taxpayer and the taxpayer's representative, if any, attend an informal conference with the review unit to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or the possibility of narrowing the issues presented in the appeal if no settlement can be made. The review unit may request clarification of the issues from the taxpayer or further information from the taxpayer or third persons.

7.11(3) *Findings.* A position letter addressing the issues raised in the appeal may be issued to the taxpayer or taxpayer's representative unless the issues may be more expeditiously determined in another manner or it is determined that such a letter is unnecessary.

7.11(4) *Format of review.* Nothing herein will prevent the review unit and the taxpayer from mutually agreeing on the manner in which the appeal will be informally reviewed.

7.11(5) *Settlements.* Settlement proposals may be submitted to the department employee assigned to the appeal or through GovConnectIowa using the manage appeal feature. Only the director, the deputy director, or the division administrator of the legal services and appeals division may approve and sign settlements of appeals. If a settlement is reached during informal procedures, a closing order stating that a settlement was reached by the parties and that the case is terminated shall be issued by the director and provided to all parties.

This rule is intended to implement Iowa Code sections 17A.10 and 421.5.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6988C**, IAB 4/19/23, effective 5/24/23; **ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—7.12(17A,421) Dismissal of appeals.

7.12(1) *Appeals filed after expiration of statutory deadline.* Appeals that are not filed by the deadline described in statute shall be dismissed by the director or the director's designee in accordance with the procedure outlined in paragraph 7.12(1)*"a."*

a. Procedures for motions to dismiss. The department shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an order dismissing the appeal. If a resistance is filed, the department has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal was filed within the statutory appeal period. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. Grounds for denying the department's motion. The department's motion shall be granted unless the taxpayer can prove that it filed the appeal prior to the expiration of the statutory appeal deadline because the department failed to:

(1) Mail or personally deliver the notice of assessment, refund denial, or other notice of department action to the taxpayer's last-known address; or

(2) If applicable, also mail the notice of assessment, refund denial, or other notice of department action to the taxpayer's authorized representative; or

(3) Comply with the requirements of Iowa Code section 421.60(2)*"b."*

For purposes of this rule, "last-known address" and "personal delivery" mean the same as described in rule 701—7.33(421).

7.12(2) *Appeals not authorized by statute.* Appeals that are not authorized by statute or otherwise are inconsistent with the statutory requirements for an appeal shall be dismissed by the director in accordance with the procedure outlined in paragraph 7.12(1)*"a,"* except that the issue shall be limited to the question of whether the appeal is authorized by statute and consistent with statutory appeal requirements.

7.12(3) *Failure to pursue the appeal at the informal stage.* If the appeal was filed timely and informal procedures were initiated, the failure of the taxpayer to provide documents or information requested by the department, including the failure to respond to a position letter or an information request, shall constitute grounds for the department to dismiss the appeal in accordance with the procedure outlined in paragraph 7.12(3)*"a."* For purposes of this subrule, an evasive or incomplete response will be treated as a failure to provide documents or information.

a. Procedures for motions to dismiss. If the department seeks to dismiss the appeal, the department shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an order dismissing the appeal. If a resistance is filed, the department has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the taxpayer failed to pursue the appeal, as that term is defined in this subrule. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. Grounds for reinstatement of dismissed appeals. If a motion to dismiss is filed and is unresisted, the appeal that was dismissed may be reinstated by the director or the director's designee for good cause if an application for reinstatement is filed with the clerk within 30 days of the date the appeal was dismissed. For purposes of this rule, "good cause" shall mean the same as "good cause" in Iowa Rule of Civil Procedure 1.977.

c. Content and review of the application for reinstatement. The application shall set forth all reasons and facts upon which the taxpayer relies in seeking reinstatement of the appeal. Supporting documentation must be supplied. The department shall review and notify the taxpayer whether the application is granted or denied.

d. Denial of the application. If the department denies the application to reinstate the appeal, the taxpayer has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing on the reinstatement. The taxpayer shall send the written request to the clerk. When a written request for formal hearing is received, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice as prescribed in rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the taxpayer has good cause to reinstate the dismissed appeal. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply in such reinstatement proceedings. If the taxpayer does not respond to a denial of the application for reinstatement within 30 days of the denial, the director or the director's designee will issue an order closing the appeal.

e. Failure to file timely application for reinstatement. If an application for reinstatement is filed after the 30-day deadline, the application shall not be accepted by the director or director's designee.

7.12(4) *Dismissal of appeals during contested case proceedings.* Once contested case proceedings have been commenced, it shall be grounds for a motion to dismiss that a taxpayer has either failed to diligently pursue the appeal or has refused to comply with requests for discovery set forth in rule 701—7.17(17A). Such a motion must be filed with the presiding officer.

This rule is intended to implement Iowa Code sections 17A.12, 421.10, 421.60, and 422.28.
[**ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.13(17A,421) Expedited hearings and demands to waive informal proceedings. Taxpayers that desire to demand a contested case prior to the conclusion of informal proceedings have two options described in detail below.

7.13(1) *Expedited cases.* If an appeal is filed that is not of precedential value and the parties desire a prompt resolution of the dispute, the department and the taxpayer may agree to have the case designated as an expedited case. A request for expedited proceedings may be made at any time prior to the commencement of a contested case.

a. Agreement. The department and the taxpayer shall execute an agreement to have the case treated as an expedited case. In this expedited case, discovery is waived. The provisions of the expedited case agreement shall constitute a waiver of the rights set forth in Iowa Code chapter 17A for contested case proceedings.

b. Procedures. Upon execution of the expedited case agreement, the department shall file its answer to the appeal with the clerk within 14 days. Within 30 days of the filing of the answer, the clerk shall transfer the appeal file, including a copy of the agreement for expedited proceedings, to the division of administrative hearings. The case shall be docketed for hearing as promptly as the presiding officer can reasonably hear the matter.

c. Finality of decision. A decision entered in an expedited case proceeding shall not be reviewed by the director or any other court and shall not be treated as a precedent for any other case.

d. Discontinuance of proceedings. Any time prior to a decision, the taxpayer or the department may request that expedited case proceedings be discontinued.

7.13(2) *Waiver of informal proceedings.* Pursuant to Iowa Code section 421.60(2)*"g,"* a taxpayer may make a written demand for a contested case proceeding after a period of six months from the filing of a proper appeal. Demands made prior to six months will be treated as premature and must be resubmitted six months or later from the filing of the appeal. Upon receipt of a timely written demand, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be applied in the manner described in the introductory paragraph to rule 701—7.14(17A).

This rule is intended to implement Iowa Code sections 17A.12 and 421.60.

[**ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.14(17A) Answer. If the parties are unable to resolve the appeal informally, or if the parties waive informal proceedings as described in rule 701—7.13(17A,421), the department shall file an answer to the appeal. Subject to the limitations in rule 701—7.13(17A,421), the department will file an answer within 30 days of receipt of written demand for a contested case hearing from the taxpayer. The answer shall be filed with the clerk. In the case of an appeal of an assessment, failure to answer within the 30-day time period and after a demand for hearing has been made shall result in the suspension of interest from the time that the department was required to answer until the date that the department files its answer. In the case of an appeal of a refund denial, failure to answer within the 30-day time period after a demand for hearing has been made shall result in the accrual of interest payable to the taxpayer at double the rate in effect under Iowa Code section 421.7 from the time the department was required to answer until the date that the department files its answer. Failure to file an answer within 30 days after the demand for contested case will not result in a default judgment for the taxpayer.

7.14(1) The answer of the department shall be drawn in a manner as provided by the Iowa Rules of Civil Procedure for answers filed in Iowa district courts.

7.14(2) Each paragraph contained in the answer shall be numbered or lettered to correspond, where possible, with the paragraphs of the appeal. The answer shall be filed with the clerk and shall be signed by the department's counsel or representative.

7.14(3) The department shall promptly serve a copy of the answer upon the representative of record or, if there is no representative of record, then upon the taxpayer when the answer is filed. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

7.14(4) The provisions of this rule shall be considered as a part of the informal procedures since a contested case proceeding, at the time of the filing of the answer, has not yet commenced. However, an answer shall be filed pursuant to this rule whether or not informal procedures have been waived by the taxpayer or the department.

7.14(5) The department's answer may contain a statement setting forth whether the case should be transferred to the division of administrative hearings or the director should retain the case for hearing.

7.14(6) The department's answer should set forth the basis for retention of the case by the director as provided in subrule 7.19(1). If the answer fails to allege that the case should be retained by the director, the case should be transferred to the division of administrative hearings for contested case proceedings,

unless the director determines on the director's own motion that the case should be retained by the director.

7.14(7) Upon the filing of an answer, the clerk will transfer the appeal file to the division of administrative hearings within 30 days of the date of the filing of the answer, unless the director determines not to transfer the case. If a party objects to a determination under rule 701—7.19(17A), the transfer, if any, would be made after the director makes a ruling on the objection.

This rule is intended to implement Iowa Code chapter 17A and section 421.60.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.15(17A) Subpoenas. Prior to the commencement of a contested case, the department shall have the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred upon it by law. Subpoenas in this case shall be issued by the director or the director's designee. Once a contested case is commenced, subpoenas must be issued by the presiding officer.

This rule is intended to implement Iowa Code sections 17A.13, 421.9, 421.17, and 422.70.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.16(17A) Commencement of contested case proceedings. A demand or request by the taxpayer for the commencement of contested case proceedings must be in writing and filed with the clerk by email to the address provided in paragraph 7.3(1)*"b,"* by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk to the address listed in paragraph 7.3(1)*"c,"* or by personal service to the department's customer service desk as described in paragraph 7.3(1)*"d."* The demand must be made no sooner than six months or more after the filing of the protest. If the demand or request does not indicate a postmark date, then the date of receipt or the date personal service is made is considered the date of filing. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

7.16(1) When requesting a contested case hearing with the department of inspections and appeals, the department shall complete a transmittal form consistent with rule 481—10.4(10A).

7.16(2) At the request of a party or the presiding officer made prior to the issuance of the hearing notice, the presiding officer shall hold a telephone conference with the parties for the purpose of selecting a mutually agreeable hearing date, which date shall be the hearing date contained in the hearing notice. The notice shall be issued within one week after the mutually agreeable hearing date is selected.

7.16(3) Contested case proceedings will be commenced by the presiding officer by delivery of notice by ordinary mail or electronic mail directed to the parties after a demand or request is made (a) by the taxpayer and the filing of the answer, if one is required, which demand or request may include a date to be set for the hearing, or (b) upon filing of the answer, if a request or demand for contested case proceedings has not been made by the taxpayer. The notice will be given by the presiding officer.

7.16(4) Any party may apply to the presiding officer for a continuance or a specific date for the hearing. The presiding officer may grant or deny such requests. The notice shall include:

a. A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is held;

c. A reference to the particular sections of the statutes and rules involved; and

d. A short and plain statement of the matters asserted, including the issues.

7.16(5) After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings in accordance with this chapter. However, any pleading or amendment thereto which is filed within 14 days prior to the date scheduled for the hearing or filed on the date of the hearing shall constitute good cause for the party adversely affected by the pleading or amendment to seek and obtain a continuance.

This rule is intended to implement Iowa Code section 17A.12.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.17(17A) Discovery. The rules of the supreme court of the state of Iowa applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested case proceedings. Disputes concerning discovery shall be resolved by the presiding officer. If necessary a hearing shall be scheduled, with reasonable notice to the parties, and, upon hearing, an appropriate order shall be issued by the presiding officer.

7.17(1) When the department relies on a witness in a contested case, whether or not the witness is a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, the department shall, on request, make such statements or reports available to a party for use on cross-examination unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable department records that are relevant to disputed material facts involved in a contested case shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

7.17(2) Evidence obtained in such discovery may be used in contested case proceedings if that evidence would otherwise be admissible in the contested case proceeding.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.18(17A) Prehearing conference.

7.18(1) Upon the motion of the presiding officer, or upon the written request of a party, the presiding officer shall direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

a. The possibility or desirability of waiving any provisions of the Act relating to contested case proceedings by written stipulation representing an informed mutual consent;

b. The necessity or desirability of setting a new date for hearing;

c. The simplification of issues;

d. The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification or limitation;

e. The possibility of agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of proof;

f. The procedure at the hearing;

g. Limiting the number of witnesses;

h. The names and identification of witnesses and the facts each party will attempt to prove at the hearing;

i. Conduct or schedule of discovery; and

j. Such other matters as may aid, expedite or simplify the disposition of the proceeding.

7.18(2) Any action taken at the prehearing conference shall be recorded in an order, unless the parties enter into a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

7.18(3) When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed for the parties to present objections on the grounds that the order does not fully or correctly embody the agreements made at such conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters the order includes, unless modified to prevent manifest injustice.

7.18(4) If either party to the contested case proceeding fails to appear at the prehearing conference without requesting a continuance and without submitting evidence or arguments which the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule 7.19(5).

This rule is intended to implement Iowa Code section 17A.12.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.19(17A) Contested case proceedings.

7.19(1) *Evidentiary hearing.* Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public.

a. Evidentiary hearings in which the presiding officer is an administrative law judge employed by the division of administrative hearings shall be held at the location designated in the notice of evidentiary hearing. Generally, the location for evidentiary hearings in such cases will be at the principal office of the Department of Inspections and Appeals, Administrative Hearings Division, Third Floor, Wallace State Office Building, Des Moines, Iowa 50319.

b. If the director retains a contested case, the location for the evidentiary hearing will generally be at the main office of the department at the Hoover State Office Building, First Floor, Des Moines, Iowa 50319. However, the department retains the discretion to change the location of the evidentiary hearing if necessary. The location of the evidentiary hearing will be designated in the notice of hearing issued by the director.

7.19(2) *Determination of presiding officer.* If the director retains a contested case for evidentiary hearing and the department is a party, the initial presiding officer will be the director. If the department is not a party to the contested case retained by the director, the presiding officer may be the director or the director's designee. Upon determining that a case will be retained and not transferred to the division of administrative hearings, the director shall issue to the parties written notification of the determination which states the basis for retaining the case for evidentiary hearing.

a. The director may determine to retain a contested case for evidentiary hearing and decision upon the filing by the department of its answer under rule 701—7.14(17A). If the answer failed to allege that the case should be retained by the director and the case was transferred to the division of administrative hearings for contested case proceedings, either party may, within a reasonable time after the issuance of the hearing notice provided in rule 701—7.16(17A), make application to the director to recall and retain the case for hearing and decision. Any such application shall be served upon the assigned administrative law judge or presiding officer.

b. A taxpayer may file a written objection to the director's determination to retain the case for evidentiary hearing and may request that the contested case be heard by an administrative law judge or presiding officer and request a hearing on the objection. Such an objection must be filed with the clerk by email to the address provided in paragraph 7.3(1)*"b,"* by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk to the address listed in paragraph 7.3(1)*"c,"* or by personal service to the department's customer service desk as described in paragraph 7.3(1)*"d"* within 20 days of the notice issued by the director of the director's determination to retain the case. The director may retain the case only upon a finding that one or more of the following apply:

(1) There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety and welfare;

(2) A qualified administrative law judge is unavailable to hear the case within a reasonable time;

(3) The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented;

(4) The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues;

(5) The case involves an issue or issues the resolution of which would create important precedent;

(6) The case involves complex or extraordinary questions of law or fact;

(7) The case involves issues or questions of law or fact that, based on the director's discretion, should be retained by the director;

(8) Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal;

(9) The request was not timely filed;

(10) The request is not consistent with a specified statute; or

(11) Assignment of an administrative law judge will result in lengthening the time for issuance of a proposed decision, after the case is submitted, beyond a reasonable time as provided in subrule 7.19(8).

In making this determination, the director shall consider whether the assigned administrative law judge has a current backlog of submitted cases for which decisions have not been issued for one year after submission.

c. The director shall issue a written order specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If a party objects to the director's determination to retain a case for evidentiary hearing, transfer of the appeal file, if any, will be made after the director makes a final determination on the objection. If the ruling is contingent upon the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to the hearing whether a qualified administrative law judge will be available.

d. If there is no factual conflict or credibility of evidence offered in issue, either party, after the contested case has been heard and a proposed decision is pending with a presiding officer other than the director for at least one year, may make application to the director to transfer the case to the director for decision. In addition, if one or more criteria listed in paragraph 7.19(2)*"b"* exist, the director, on the director's own motion, may issue a notice to the parties of the director's intention to transfer the case to the director for decision. The opposing party may file, within 20 days after service of such application or notice by the director, a resistance setting forth in detail why the case should not be transferred. If the director approves the transfer of the case, the director shall issue a final contested case decision. The director or a party may request that the parties be allowed to submit proposed findings of fact and conclusions of law.

e. The director has the right to require that any presiding officer, other than the director, be a licensed attorney in the state of Iowa, unless the contested case only involves licensing. In addition, any presiding officer must possess, upon determination by the director, sufficient technical expertise and experience in the areas of taxation and presiding over proceedings to effectively determine the issues involved in the proceeding.

f. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the director.

7.19(3) *Conduct of proceedings.*

a. A proceeding shall be conducted by a presiding officer who shall:

(1) Open the record and receive appearances;

(2) Administer oaths and issue subpoenas;

(3) Enter the notice of hearing into the record;

(4) Receive testimony and exhibits presented by the parties;

(5) In the presiding officer's discretion, interrogate witnesses;

(6) Rule on objections and motions;

(7) Close the hearing; and

(8) Issue an order containing findings of fact and conclusions of law.

b. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearing. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall be notified at least 30 days in advance of the date and place of the hearing.

c. Evidentiary proceedings shall be oral, open to the public, and recorded either by electronic means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs of reporting. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the department for at least five years from the date of the decision. An opportunity shall be afforded to the parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order: (1) taxpayer, (2) intervenor (if applicable), (3) department, (4) rebuttal by taxpayer, (5) oral argument by parties (if necessary).

d. If the taxpayer or the department appears without counsel or other representative who can reasonably be expected to be familiar with these rules, the presiding officer shall explain to the parties the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when the parties have counsel or representation. It should be the purpose of the presiding officer to assist any party appearing without such representative to the extent necessary to allow the party to fairly present evidence, testimony, and argument on the issues. The presiding officer shall take whatever steps may be necessary and proper to ensure that all evidence having probative value is presented and that each party is accorded a fair hearing.

e. If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner than when an evidentiary hearing is conducted.

f. If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, upon the presiding officer's own motion or upon the motion of the party who has appeared, adjourn the hearing, enter a default decision, or proceed with the hearing and make a decision on the merits in the absence of the party.

g. Contemptuous conduct by any person appearing at a hearing shall be grounds for the person's exclusion from the hearing by the presiding officer.

h. A stipulation by the parties of the issues or a statement of the issues in the notice commencing the contested case cannot be changed by the presiding officer without the consent of the parties. The presiding officer shall not, on the presiding officer's own motion, change or modify the issues agreed upon by the parties. Notwithstanding the provisions of this paragraph, a party, within a reasonable time prior to the hearing, may request that a new issue be addressed in the proceedings, except that the request cannot be made after the parties have stipulated to the issues.

7.19(4) *Rules of evidence.* In evaluating evidence, the department's experience, technical competence, and specialized knowledge may be utilized.

a. Oath. All testimony presented before the presiding officer shall be given under oath, which the presiding officer has authority to administer.

b. Production of evidence and testimony. The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records, or other real evidence.

c. Subpoena. When a subpoena is desired after the commencement of a contested case proceeding, the proper party shall indicate to the presiding officer the name of the case, the docket number, and the last-known mailing addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the presiding officer, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case which the witness is required to attend. No costs for serving a subpoena will be allowed if the subpoena is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the presiding officer.

d. Admissibility of evidence.

(1) Evidence having probative value.

1. Although the presiding officer is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which a reasonably prudent person would rely for the conduct of the person's serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the presiding officer may admit and give probative effect to evidence on which a reasonably prudent person would rely for the conduct of the person's serious affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, substantially any part of the evidence may be required to be submitted in verified written form by the presiding officer.

2. Objections to evidentiary offers may be made at the hearing, and the presiding officer's ruling thereon shall be noted in the record.

(2) Evidence of a federal determination of the taxpayer's liability. Evidence of a federal determination of the taxpayer's liability such as a treasury department ruling, regulation or determination letter issued to the taxpayer; a taxpayer's federal court decision; or an Internal Revenue Service assessment issued to the taxpayer relating to issues raised in the proceeding shall be admissible, and the taxpayer shall be presumed to have conceded the accuracy of the federal determination unless the taxpayer specifically states wherein it is erroneous.

(3) Copies of evidence. A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original, if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available.

(4) Stipulations. Approval of the presiding officer is not required for stipulations of the parties to be used in contested case proceedings. In the event the parties file a stipulation in the proceedings, the stipulation shall be binding on the parties and the presiding officer.

e. Identification of exhibits.

Exhibits which are offered by taxpayers and attached to a stipulation or entered in evidence shall be numbered serially, i.e., 1, 2, 3, etc.; whereas, exhibits offered by the department shall be lettered serially, i.e., A, B, C, etc.; and those offered jointly shall be numbered and lettered, i.e., 1-A, 2-B, 3-C, etc.

f. Official notice. The presiding officer may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the department. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions, or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties shall be afforded an opportunity to contest such facts prior to the issuance of the decision in the contested case proceeding unless the presiding officer determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

g. Evidence outside the record. Except as provided by these rules, the presiding officer shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

h. Presentation of evidence and testimony. In any hearing, each party in attendance shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. A person whose testimony has been submitted in written form shall, if available, also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for re-direct examination and re-cross-examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

i. Offer of proof. An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

7.19(5) *Motions.*

a. Filing of motions after commencement of contested case proceedings. After commencement of contested case proceedings, appropriate motions may be filed with the presiding officer by any party when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the motions are based.

b. Service, rulings. Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. Such motions shall be ruled on by the presiding officer. The presiding officer shall rule on the motion by issuing an order. A copy of the order containing the ruling on the motion shall be mailed to the parties and authorized representatives. A motion may be made orally during the course of a hearing; however, the presiding officer may request that the motion be reduced to writing and filed with the presiding officer.

c. Consent of the opposing party, burden. To avoid a hearing on a motion, it is advisable to secure the consent of the opposing party prior to filing the motion. If consent of the opposing party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause as to why the motion should be granted.

d. Affidavits. The party making the motion may affix thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposing party may reply with counter affidavits.

e. Types of motions. Types of motions include, but are not limited to:

(1) Motion for continuance. Motions for continuance should be filed no later than ten days before the scheduled date of the contested case hearing unless the grounds for the motion are first known to the moving party within ten days of the hearing, in which case the motion shall be promptly filed and shall set forth why it could not be filed at least ten days prior to the hearing. Grounds for motion for continuance include, but are not limited to, the unavailability of a party, a party's representative, or a witness; the incompletion of discovery; and the possibility of settlement of the case.

(2) Motion for dismissal.

(3) Motion for summary judgment.

(4) Motion for redaction of identifying details in the decision. For more information, see rule 701—7.9(17A).

(5) Motion for default.

(6) Motion to vacate default.

f. Hearing on motions. Motions subsequent to the commencement of a contested case proceeding shall be determined by the presiding officer.

g. Summary judgment procedure. Summary judgment may be obtained under the following conditions and circumstances:

(1) A party may, after a reasonable time to complete discovery, after completion of discovery, or by agreement of the parties, move, with or without supporting affidavits, for summary judgment in the party's favor upon all or any part of a party's claim or defense.

(2) The motion shall be filed not less than 45 days prior to the date the case is set for hearing, unless otherwise ordered by the presiding officer. Any party resisting the motion shall file the following within 30 days from the time of service of the motion: a resistance; a statement of disputed facts, if any; and a memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. The time fixed for hearing or normal submission on the motion shall be not less than 35 days after the filing of the motion, unless another time is ordered by the presiding officer. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(3) Upon any motion for summary judgment pursuant to this rule, there shall be affixed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits which support such contentions and a memorandum of authorities.

(4) Supporting and opposing affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleading, but the party's response must set forth specific facts, by affidavits or as otherwise provided in this rule, showing that there is a genuine issue for hearing. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(5) If, on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the presiding officer at the hearing of the motion, by examining the pleadings and the evidence before the presiding officer and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually, and in good faith, controverted. The presiding officer shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or other relief is

not in controversy, and directing such further proceedings in the action as are just. Upon the hearing of the contested case, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(6) Should it appear from the affidavits of a party opposing the motion that the party cannot present, by affidavit, facts essential to justify the party's opposition, the presiding officer may refuse the application for judgment, may order a continuance to permit affidavits to be obtained, may order depositions be taken or discovery be completed, or may make any other order appropriate.

(7) An order on summary judgment that disposes of less than the entire case is appealable to the director at the same time that the proposed order is appealable pursuant to subrule 7.19(8).

7.19(6) *Briefs and oral argument.*

a. At any time, upon the request of any party or in the presiding officer's discretion, the presiding officer may require the filing of briefs on any of the issues before the presiding officer prior to or at the time of hearing, or at a subsequent time. At the hearing, the parties should be prepared to make oral arguments as to the facts and law at the conclusion of the hearing if the presiding officer so directs.

b. A copy of all briefs shall be filed. Filed briefs shall conform to the requirements of subrules 7.5(1) and 7.5(2).

c. If the parties agree on a schedule for submission of briefs, the schedule shall be binding on the parties and the presiding officer except that, for good cause shown, the time may be extended upon application of a party.

7.19(7) *Defaults.* If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

a. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading or has failed to appear after proper service.

b. A default decision or a decision rendered on the merits after a party failed to appear or participate in a contested case proceeding becomes a final department action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided in subrule 7.19(8). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, and such affidavit(s) must be attached to the motion.

c. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

d. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

e. For purposes of this rule, "good cause" shall mean the same as "good cause" in Iowa Rule of Civil Procedure 1.977.

f. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adversely affected party as provided in subrule 7.19(12).

g. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

h. A default decision may award any relief consistent with the request for relief by the party in whose favor the default decision is made and embraced in the contested case issues; but unless the defaulting party has appeared, the relief awarded cannot exceed the relief demanded.

i. A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for a stay.

7.19(8) *Orders.*

a. At the conclusion of the hearing, the presiding officer, in the presiding officer's discretion, may request the parties to submit proposed findings of fact and conclusions of law. Upon the request of any party, the presiding officer shall allow the parties an opportunity to submit proposed findings of fact and conclusions of law. In addition to or in lieu of the filing of briefs, upon the request of all of the parties waiving any contrary contested case provisions of law or of these rules, the presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law, and the presiding officer may sign and adopt as the decision or proposed decision one of such proposed findings of fact and conclusions of law without any changes.

b. The decision in a contested case is an order which shall be in writing or stated in the record. The order shall include findings of fact prepared by the presiding officer, unless the presiding officer is unavailable, and based solely on the evidence in the record and on matters officially noticed in the record, and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. The decision must include an explanation of why the relevant evidence in the record supports each material finding of fact. If the issue of reasonable litigation costs was held in abeyance pending the outcome of the substantive issues in the contested case and the proposed order decides substantive issues in favor of the taxpayer, the proposed order shall include a notice of time and place for a hearing on the issue of whether reasonable litigation costs shall be awarded and on the issue of the amount of such award, unless the parties agree otherwise. All decisions and orders in a contested case proceeding shall be based solely on the legal bases and arguments presented by the parties. In the event that the presiding officer believes that a legal basis or argument for a decision or order exists, but has not been presented by the parties, the presiding officer shall notify the parties and give them an opportunity to file a brief that addresses such legal basis or argument.

c. When a motion has been made to redact identifying details in an order on the basis of personal privacy or trade secrets, the justification for such redaction or refusal to redact shall be made by the moving party and shall appear in the order.

d. When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes final and not subject to judicial review unless there is an appeal to or review on motion of the director within 30 days of the date of the order, including Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A, or 10 days, excluding Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A, for a revocation order pursuant to rule 701—7.39(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director's motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal to or review by the director within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become final and not subject to judicial review. On an appeal from, review of, or application for rehearing concerning the presiding officer's order, the director has all the power which the director would initially have had in making the decision; however, the director will consider only those issues presented at the hearing before the presiding officer or raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

e. Notwithstanding this rule, where a presiding officer other than the director issues an interlocutory decision or ruling which does not dispose of all the issues, except reasonable litigation costs, in the contested case proceeding, the party adversely affected by the interlocutory decision or ruling may apply to the director within 20 days (10 days for a revocation proceeding) of the date

of issuance of the interlocutory decision or ruling to grant an appeal in advance of the proposed decision. The application shall be served on the parties and the presiding officer. The party opposing the application shall file any resistance within 15 days of the service of the application unless, for good cause, the director extends the time for such filing. The director, in the exercise of discretion, may grant the application on finding that such interlocutory decision or ruling involves substantial rights and will materially affect the proposed decision and that a determination of its correctness before hearing on the merits will better serve the interests of justice. The order of the director granting the appeal may be on terms setting forth the course of proceedings on appeal, including advancing the appeal for prompt submission, and the order shall stay further proceedings below. The presiding officer, at the request of the director, shall promptly forward to the director all or a portion of the file or record in the contested case proceeding.

f. In the event of an appeal to or review of the proposed order by the director, the administrative hearings division shall be promptly notified of the appeal or review by the director. The administrative hearings division shall, upon such notice, promptly forward the record of the contested case proceeding and all other papers associated with the case to the director.

g. A decision by the director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding of fact, or may reverse or modify any conclusion of law that the director finds to be in error.

h. Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service, regular mail, certified mail, return receipt requested, AEDMS as described in 481—Chapter 16, or any other method to which the parties may agree. For example, a copy of the order can be submitted by electronic mail if both parties agree.

i. A cross-appeal may be taken within the 30-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule 701—7.39(17A), the cross-appeal may be taken within the 10-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken.

j. Upon issuance of a closing order or the proposed decision by a presiding officer other than the director, such presiding officer no longer has jurisdiction over the contested case. Thereafter, any further proceedings associated with or related to the contested case must occur before the director.

k. A party may not seek judicial review until the director has issued a final decision of the agency. If a party seeks judicial review of a proposed decision of an administrative law judge without appealing to the director or without review of the proposed decision by the director, the party shall be deemed to have failed to exhaust adequate administrative remedies.

7.19(9) *Stays.*

a. During the pendency of judicial review of the final contested case order of the department, the party seeking judicial review may file with the director an application for a stay. The application shall set forth in detail the reasons why the applicant is entitled to a stay and shall specifically address the following four factors:

(1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter;

(2) The extent to which the applicant will suffer irreparable injury if the stay is not granted;

(3) The extent to which the granting of a stay to the applicant will substantially harm the other parties to the proceedings; and

(4) The extent to which the public interest relied on by the department is sufficient to justify the department's actions in the circumstances.

b. The director shall consider and balance the previously mentioned four factors and may consult with department personnel and the department's representatives in the judicial review proceeding. The director shall expeditiously grant or deny the stay.

7.19(10) *Burden of proof.* The burden of proof with respect to assessments or denials of refunds in contested case proceedings is as follows:

a. The department must carry the burden of proof by clear and convincing evidence as to the issue of fraud with intent to evade tax.

b. The burden of proof is on the department for any tax periods for which the assessment was not made within six years after the return became due, excluding any extension of time for filing such return, except where the department's assessment is the result of the final disposition of a matter between the taxpayer and the Internal Revenue Service or where the taxpayer and the department signed a waiver of the statute of limitations to assess.

c. The burden of proof is on the department as to any new matter or affirmative defense raised by the department. "New matter" means an adjustment not set forth in the computation of the tax in the assessment or refund denial, as distinguished from a new reason for the assessment or refund denial. "Affirmative defense" is a defense resting on facts not necessary to support the taxpayer's case.

d. In all instances where the burden of proof is not expressly placed upon the department by this subrule, the burden of proof is upon the taxpayer.

7.19(11) *Costs.*

a. A prevailing taxpayer in a contested case proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded by the department reasonable litigation costs incurred subsequent to the issuance of the notice of assessment or refund denial that are based upon the following:

(1) The reasonable expenses of expert witnesses.

(2) The reasonable costs of studies, reports, and tests.

(3) The reasonable fees of independent attorneys or independent accountants retained by the taxpayer. No such award is authorized for accountants or attorneys who represent themselves or who are employees of the taxpayer.

b. An award for reasonable litigation costs shall not exceed $25,000 per case.

c. No award shall be made for any portion of the proceeding which has been unreasonably protracted by the taxpayer.

d. For purposes of this subrule, "prevailing taxpayer" means a taxpayer who establishes that the position of the department in the contested case proceeding was not substantially justified and who has substantially prevailed with respect to the amount in controversy, or has substantially prevailed with respect to the most significant issue or set of issues presented. If the position of the department in issuance of the assessment or refund denial was not substantially justified and if the matter is resolved or conceded before the contested case proceeding is commenced, there cannot be an award for reasonable litigation costs.

e. The definition of "prevailing taxpayer" is taken from the definition of "prevailing party" in 26 U.S.C. §7430. Therefore, federal cases determining whether the Internal Revenue Service's position was substantially justified will be considered in the determination of whether a taxpayer is entitled to an award of reasonable litigation costs to the extent that 26 U.S.C. §7430 is consistent with Iowa Code section 421.60(4).

f. The taxpayer has the burden of establishing the unreasonableness of the department's position.

g. Once a contested case has commenced, a concession by the department of its position or a settlement of the case either prior to the evidentiary hearing or any order issued does not, per se, either authorize an award of reasonable litigation costs or preclude such award.

h. If the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies with respect to the tax imposed by Iowa Code chapter 453B, an award for reasonable litigation costs shall not be made in a contested case proceeding involving the determination, collection, or refund of that tax.

i. The taxpayer who seeks an award of reasonable litigation costs must specifically request such award in the appeal, or the request for award will not be considered.

j. A request for an award of reasonable litigation costs shall be held in abeyance until the concession or settlement of the contested case proceeding, or the issuance of a proposed order in the contested case proceeding, unless the parties agree otherwise.

k. At the hearing held for the purpose of deciding whether an award for reasonable litigation costs should be awarded, consideration shall be given to the following points:

(1) Whether the department's position was substantially justified;

(2) Whether the taxpayer is the prevailing taxpayer;

(3) Whether the taxpayer has established how the alleged reasonable litigation costs were incurred. The burden is upon the taxpayer to establish how the alleged reasonable litigation costs were incurred. This requires a detailed accounting of the nature of each cost, the amount of each cost, and to whom the cost was paid or owed;

(4) Whether alleged litigation costs are reasonable or necessary;

(5) Whether the taxpayer has met the taxpayer's burden of demonstrating all of these points.

7.19(12) *Interlocutory appeals.*

a. Upon written request of a party or on the director's own motion, the director may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the director at the time of the review of the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

b. Interlocutory appeals do not apply to licensing.

7.19(13) *Consolidation and severance.*

a. Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

c. Stipulations. Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not, or should not be, fairly in dispute.

d. Informal disposition. Without the necessity of proceeding to an evidentiary hearing in a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, or consent order or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the presiding officer that the case has been settled. Upon request, the presiding officer shall issue a closing order to reflect such a disposition. The contested case is terminated upon issuance of a closing order.

e. Mutual waivers. Unless otherwise precluded by law, the parties in a contested case proceeding may mutually agree to waive any provision under this rule governing contested case proceedings.

This rule is intended to implement Iowa Code sections 17A.12, 17A.14, 17A.15, 421.60 and 452A.68.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1303C**, IAB 2/5/14, effective 3/12/14; **ARC 2657C**, IAB 8/3/16, effective 9/7/16; **ARC 5932C**, IAB 10/6/21, effective 11/10/21; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6551C**, IAB 10/5/22, effective 11/9/22; **ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.20(17A) Interventions. Interventions shall be governed by the Iowa rules of civil procedure.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.21(17A) Record and transcript.

7.21(1) The record in a contested case shall include:

a. All pleadings, motions, and rulings;

b. All evidence received or considered and all other submissions;

c. A statement of all matters officially noticed;

d. All questions and offers of proof, objections, and rulings thereon;
e. All proposed findings and exceptions;
f. All orders of the presiding officer; and
g. The order of the director on appeal or review.

7.21(2) Oral hearings regarding proceedings on appeal to or considered on motion of the director which are recorded by electronic means shall not be transcribed for the record of such appeal or review unless a party, by written notice, or the director, orally or in writing, requests such transcription. Such a request must be filed with the clerk who will be responsible for making the transcript. A transcription will be made only of that portion of the oral hearing relevant to the appeal or review, if so requested and if no objection is made by any other party to the proceeding or the director. Upon request, the department shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

7.21(3) Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recording, unless otherwise provided by law.

7.21(4) Upon issuance of a proposed decision which leaves no issues open for further consideration or upon issuance of a closing order, the administrative hearings division shall promptly forward the record of a contested case proceeding to the director. However, the administrative hearings division may keep the tapes of any evidentiary proceeding in case a transcript of the proceeding is required and, if one is required, the administrative hearings division shall make the transcription and promptly forward the tapes and the transcription to the director.

This rule is intended to implement Iowa Code section 17A.12.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.22(17A) Application for rehearing. Any party to a contested case may file an application with the director for a rehearing in the contested case, stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the final order is issued. See subrule 7.19(8) as to when a proposed order becomes a final order. A copy of such application shall be timely mailed by the applicant to all parties in conformity with rule 701—7.3(17A). The director shall have 20 days from the filing of the application for rehearing to grant or deny the application. If the application for rehearing is granted, a notice will be served on the parties stating the time and place of the rehearing. An application for rehearing shall be deemed denied if not granted by the director within 20 days after filing.

7.22(1) The application for rehearing shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	
(state taxpayer's name and address and designate type of proceeding, e.g., income tax refund claim)	*	APPLICATION FOR REHEARING
	*	Docket No. _____
	*	

7.22(2) The application for rehearing shall substantially state in separate numbered paragraphs the following:

a. Clear and concise statements of the reasons for requesting a rehearing and each and every error which the party alleges to have been committed during the contested case proceedings;
b. Clear and concise statements of all relevant facts upon which the party relies;
c. Reference to any particular statute or statutes and any rule or rules involved;
d. The signature of the party or that of the party's representative, the address of the party or of the party's representative, and the telephone number of the party or the party's representative.

7.22(3) No applications for rehearing shall be filed with or entertained by an administrative law judge.

This rule is intended to implement Iowa Code section 17A.16.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.23(17A) Ex parte communications and disqualification.

7.23(1) *Ex parte communication.* A party that has knowledge of a prohibited communication by any party or presiding officer should file a copy of the written prohibited communication or a written summary of the prohibited oral communication with the clerk. The clerk will transfer to the presiding officer the filed copy of the prohibited communication.

a. Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in this rule, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record. Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

b. "Ex parte" communication defined. Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

c. How to avoid prohibited communications. To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with this chapter and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. Where permitted, oral communications may be initiated through conference telephone calls including all parties or their representatives.

d. Joint presiding officers. Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

e. Advice to presiding officer. Persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the parties are not disqualified from participating in the making of a proposed or final decision under any provision of law and the parties comply with these rules.

f. Procedural communications. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties when seeking to continue hearings or other deadlines.

g. Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication, shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and

served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

h. Disclosure by presiding officer. Promptly after receiving the communication or being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

i. Sanction. The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default, a decision against the offending party, censure, suspension, or revocation of the privilege to practice before the department or the administrative hearings division. Violation of ex parte communication prohibitions by department personnel or their representatives shall be reported to the clerk for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

7.23(2) *Disqualification of a presiding officer.* Request for disqualification of a presiding officer must be filed in the form of a motion supported by an affidavit asserting an appropriate ground for disqualification. A substitute presiding officer may be appointed by the division of administrative hearings if the disqualified presiding officer is an administrative law judge. If the disqualified presiding officer is the director, the governor must appoint a substitute presiding officer.

a. Grounds for disqualification. A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted, or advocated in connection with that case the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case the specific controversy underlying that contested case or a pending factually related contested case or controversy involving the same parties;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

(6) Has a spouse or relative within the third degree of relationship that:

1. Is a party to the case or an officer, director, or trustee of a party to the case;
2. Is a lawyer in the case;
3. Is known to have an interest that could be substantially affected by the outcome of the case; or
4. Is likely to be a material witness in the case; or

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

b. Personally investigated. "Personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other department functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and these rules.

c. Disqualification and the record. In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit

and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

d. Motion asserting disqualification.

(1) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

(2) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and seek a stay as provided under this chapter.

This rule is intended to implement Iowa Code section 17A.17.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.24(17A) Declaratory order—in general. Any oral or written advice or opinion rendered to members of the public by department personnel not pursuant to a petition for declaratory order is not binding upon the department.

7.24(1) *Filing a petition for declaratory order.*

a. How to submit a petition. Any person may file a petition seeking a declaratory order using the methods described in rule 701—7.3(17A).

b. When a petition is considered filed. A petition is deemed filed when it is received by the department as described in rule 701—7.4(17A). The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department with an extra copy for this purpose.

c. Department forms. Petitioners may use the form provided on GovConnectIowa or the form provided on the department's website, tax.iowa.gov/forms, to submit a petition.

d. Manually created petitions.

(1) If not submitted using the department-provided formats, the petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner)	*	PETITION FOR
for a Declaratory Order on (Cite	*	DECLARATORY ORDER
provisions of law involved).	*	Docket No. _____
	*	

(2) The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested;
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law;
3. The questions the petitioner wants answered, stated clearly and concisely;
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers;
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome;
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition;

8. Any request by petitioner for a meeting provided for by this rule;

9. Whether the petitioner is presently under audit by the department; and

10. The signature of the petitioner or the petitioner's representative and date of signature. It must also include the name, mailing address, and telephone number of the petitioner and of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed. Petitions submitted by a representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department.

7.24(2) *Notice of petition.* Within 15 days after receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The department may also give notice to any other persons.

7.24(3) *Intervention.*

a. Nondiscretionary intervention. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order, shall be allowed to intervene in a proceeding for a declaratory order.

b. Discretionary intervention. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

c. Filing and form of petition for intervention. A petition for intervention shall be filed in accordance with paragraph 7.3(1)*"b," "c,"* or *"d."*. Such a petition is deemed filed when it is received in accordance with rule 701—7.4(17A). The department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

Petition by (Name of Original	*	PETITION FOR
Petitioner) for a Declaratory Order	*	INTERVENTION
on (Cite provisions of law cited in	*	Docket No. _____
original Petition).	*	

d. The petition for intervention must provide the following information:

(1) Facts supporting the intervenor's standing and qualifications for intervention;

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers;

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome;

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;

(5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented;

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding;

(7) Whether the intervenor is presently under audit by the department; and

(8) Consent of the intervenor to be bound by the declaratory order.

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

directed. Petitions for intervention submitted by a representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department.

e. Standing. For a petition for intervention to be allowed, the petitioner must have consented to be bound by the declaratory order and the petitioner must have standing regarding the issues raised in the petition for declaratory order. Facts described in the petition for intervention must be those supporting intervention, not related to the substantive issues in the petition. The petition for intervention must not correct facts that are in the petition for declaratory order or raise any additional facts. To have standing, the intervenor must have a legally protectible and tangible interest at stake in the petition for declaratory order under consideration by the director for which the party wishes to petition to intervene. The department may, by rule, impose a requirement of standing upon those that seek a declaratory order at least to the extent of requiring that they be potentially aggrieved or adversely affected by the department action or failure to act. Arthur Earl Bonfield, "The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rule making Process," 60 Iowa Law Review 731, 812-13 (1975). The department adopts this requirement of standing for those seeking a petition for a declaratory order and those seeking to intervene in a petition for a declaratory order.

f. Associations. An association or a representative group is not considered to be an entity qualifying for filing a petition requesting a declaratory order on behalf of all of the association or group members. Each member of an association may not be similarly situated or represented by the factual scenario set forth in such a petition.

g. Factually distinct matters. If a party seeks to have an issue determined by declaratory order, but the facts are different from those in a petition for declaratory order that is currently under consideration by the director, the interested party should not petition as an intervenor in the petition for declaratory order currently under the director's consideration. Instead, the party should file a separate petition for a declaratory order, and the petition should include all of the relevant facts. The director may deny a petition for intervention without denying the underlying petition for declaratory order that is involved.

7.24(4) *Briefs.* The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

7.24(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the Legal Services Division, Iowa Department of Revenue, P.O. Box 14457, Des Moines, Iowa 50306-3457; or by email to the address provided in paragraph 7.3(1)*"b."*

7.24(6) *Service and filing of petitions and other papers.*

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

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed in the same manner described in subrule 7.24(1). All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided in rules 701—7.3(17A) and 701—7.4(17A).

7.24(7) *Department consideration.*

a. Informal meetings. Upon request by petitioner in the petition, the department may schedule a brief and informal meeting between the original petitioner, all intervenors, and the department, a member of the department, or a member of the staff of the department to discuss the questions raised.

b. Requests for additional information. The department may solicit additional information from the petitioner and establish a time frame for response. The department may also solicit comments or

information from any other person on the questions raised. Also, comments or information on the questions raised may be submitted to the department by any person.

7.24(8) *Action on petition.*

a. Within 30 days after receipt of a petition for a declaratory order, the director shall take action on the petition. That action may include issuing an order, issuing a refusal, or scheduling the issuance of a decision for a later date.

b. The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means.

7.24(9) *Refusal to issue order.*

a. Reasons for refusal to issue order. The department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for any of the following reasons:

(1) The petition does not substantially comply with the required form;

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order;

(3) The department does not have jurisdiction over the questions presented in the petition;

(4) The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding that may definitively resolve them;

(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter;

(6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order;

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances;

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct, in an effort to establish the effect of that conduct or to challenge a department decision already made;

(9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner;

(10) The petitioner requests the department to determine whether a statute is unconstitutional on its face;

(11) The petition requests a declaratory order on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings; or

(12) The petition requests a declaratory order on an issue that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

b. Action on refusal. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

c. Filing of new petition. Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

7.24(10) *Contents of declaratory order, refusal; effective date.*

a. In addition to the ruling itself, a declaratory order or refusal must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

b. A declaratory order is effective on the date of issuance.

7.24(11) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be delivered promptly to the original petitioner and all intervenors or otherwise served in accordance with rule 701—7.3(17A).

7.24(12) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. A declaratory order is binding on the department, the petitioner, and any intervenors. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition. A declaratory order, once issued, will not be withdrawn at the request of the petitioner.

7.24(13) *Withdrawal of the petition.* The petitioner may voluntarily dismiss its petition by notifying the department in writing at any time before the order is issued. The petitioner may not dismiss the petition after the order is issued.

This rule is intended to implement Iowa Code section 17A.9.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 9/23/20; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.25(17A) Department procedure for rule making.

7.25(1) *Applicability.* Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

7.25(2) *Advice on possible rules before notice of proposed rule adoption.* In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

The department may send notices of proposed rule making and a request for comments to any agency, organization, or association known to the department to have a direct interest or expertise pertaining to the substance of the proposed rule.

7.25(3) *Public rule-making docket.* The department utilizes the public rule-making docket available to all agencies on the Iowa legislature's website.

7.25(4) *Notice of proposed rule making.*

a. Contents. Except for rules filed through emergency rule making, at least 35 days before the adoption of a rule the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

(1) A brief explanation of the purpose of the proposed rule.

(2) The specific legal authority for the proposed rule.

(3) Except to the extent impracticable, the text of the proposed rule.

(4) Where, when, and how persons may present their views on the proposed rules.

(5) Where, when, and how persons may demand an oral proceeding on the proposed rule if the Notice does not already provide for one.

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

b. Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 7.25(12).

c. Registration for Notices of Intended Action. Any person may register on the department's website to receive announcements related to rules from the department. Persons registered to receive announcements from the department will be notified of the publication of the department's Notices of Intended Action and Adopted and Filed rules. Persons who desire to request a paper copy of any rule filing shall make a request to the department's administrative rules coordinator, in writing or by email. The request must specify the rules requested and specify the number of copies. The requester will be required to reimburse the department for the actual costs incurred in providing copies.

7.25(5) *Public participation.*

a. Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing or via email, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the person designated on the Notice of Intended Action, or to the attention of the department's administrative rules coordinator, at the address provided in paragraph 7.3(1)*"c"* or by email to the address provided in paragraph 7.3(1)*"b."*

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

(1) A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

(2) A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

(3) A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing the request.

c. Conduct of oral proceedings.

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

(2) Scheduling and notice. An oral proceeding on a proposed rule may be held in person, virtually, or both. The proceeding shall not be held earlier than 20 days after the related Notice of Intended Action is published in the Iowa Administrative Bulletin.

(3) Presiding officer. An employee of the department shall preside at the oral proceeding on a proposed rule.

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

1. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of both themselves and other individuals.

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

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

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

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

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

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

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

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

e. Accessibility. The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person listed on the Notice of Intended Action or the department's administrative rules coordinator in advance to arrange access or other needed services.

7.25(6) *Regulatory analysis.*

a. Small business impact mailing list. Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the department's administrative rules coordinator by ordinary mail or email to the address provided in paragraph 7.3(1)*"b."* The application for registration shall state:

(1) The name of the small business or organization of small businesses;

(2) The address of the small business or organization of small businesses;

(3) The name of a person authorized to transact business for the applicant;

(4) A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;

(5) Whether the registrant desires copies of Notices of Intended Action at cost or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

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

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

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

(1) The legislative services agency's administrative rules coordinator, or

(2) The administrative rules review committee.

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

(1) The administrative rules review committee;

(2) The legislative services agency's administrative rules coordinator;

(3) At least 25 or more persons who sign the request provided that each represents a different small business, or

(4) An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

e. Time period for analysis. Upon receipt of a timely request for a regulatory analysis, the department shall adhere to the timelines described in Iowa Code section 17A.4A(4).

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

g. Contents of concise summary. The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) and 17A.4A(5).

h. Publication of a concise summary. The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

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

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

7.25(7) *Fiscal impact statement.* A rule that mandates additional combined expenditures exceeding $100,000 or combined expenditures of at least $500,000 within five years, by all affected political subdivisions, or by agencies and entities which contract with political subdivisions to provide services, must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

7.25(8) *Time and manner of rule adoption.*

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

b. Consideration of public comment. Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

c. Reliance on department expertise. Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

7.25(9) *Variance between adopted rule and published notice of proposed rule adoption.*

a. Allowable variances. The department shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

(1) The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that Notice; and

(2) The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and

(3) The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

b. Fair warning. In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the department shall consider the following factors:

(1) The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests.

(2) The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.

(3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

c. Petition for rule making. The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the legislative services agency's administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

d. Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

7.25(10) *Exemptions from public rule-making procedures, emergency rule making.*

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

b. Category exempt. Rule makings for nonsubstantive changes to a rule, such as rules for correcting grammar, spelling or punctuation in an existing or proposed rule, are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, and contrary to the public interest.

c. Public proceedings on rules adopted without them. The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon paragraph 7.25(10)*"a."* Upon written petition by a governmental subdivision, the administrative rules review committee, a state agency, the legislative services agency's administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon paragraph 7.25(10)*"a."* This petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of the petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of paragraph 7.25(10)*"a"* or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

7.25(11) *Concise statement of reasons.*

a. General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered by mail to the address listed in paragraph 7.3(1)*"c"* or by email to the person listed on the adopted rule filing or to the department's administrative rules coordinator at the address provided in paragraph 7.3(1)*"b."* The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received in accordance with rule 701—7.4(17A).

b. Contents. The concise statement of reasons shall contain:

(1) The reasons for adopting the rule;

(2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change;

(3) The principal reasons urged in the rule-making proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

c. Time of issuance. After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

7.25(12) *Contents, style, and form of rule.*

a. Contents. Each rule adopted by the department shall contain the text of the rule and, in addition:

(1) The date the department adopted the rule;

(2) A brief explanation of the principal reasons for the rule-making action if the reasons are required by Iowa Code section 17A.4(2), or the department in its discretion decides to include the reasons;

(3) A reference to all rules repealed, amended, or suspended by the rule;

(4) A reference to the specific statutory or other authority authorizing adoption of the rule;

(5) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

(6) A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by Iowa Code section 17A.4(2), or the department in its discretion decides to include the reasons; and

(7) The effective date of the rule.

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

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

provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

7.25(14) *Filing of rules.* The department shall file each rule it adopts in the office of the legislative services agency's administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have included with it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the department shall use the standard form prescribed by the legislative services agency's administrative rules coordinator.

7.25(15) *Effectiveness of rules prior to publication, emergency rule making.*

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

b. Special notice. When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b,"* the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"* shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of paragraph 7.25(15)*"b."*

7.25(16) *Review of rules by department.*

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

b. Conduct of review. In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the department's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any requests for exceptions to the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department's report shall be sent

to the administrative rules review committee and the legislative services agency's administrative rules coordinator. The report shall also be available for public inspection.

This rule is intended to implement Iowa Code chapter 17A and section 421.14.
[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.26(17A) Public inquiries on rule making and the rule-making records. The department maintains records of information obtained and all actions taken and criticisms received regarding any rule within the past five years. The department also keeps a record of the status of every rule within the rule-making procedure. Inquiries concerning the status of rule making may be made by contacting the department's administrative rules coordinator by mail at the address listed in paragraph 7.3(1)*"c"* or by email to the address provided in paragraph 7.3(1)*"b."* For additional information regarding criticism of rules, see rule 701—7.27(17A).

This rule is intended to implement Iowa Code section 17A.3.
[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.27(17A) Criticism of rules. Interested persons may submit criticisms, requests for waivers, or comments regarding a rule to the department's administrative rules coordinator by mail at the address listed in paragraph 7.3(1)*"c"* or by email to the address provided in paragraph 7.3(1)*"b."* A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike of the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, and have a valid legal basis for support. All requests for waivers, comments, or criticisms received on any rule will be kept in a separate record for a period of five years by the department.

This rule is intended to implement Iowa Code sections 17A.7 and 421.60.
[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.28(17A) Waiver of certain department rules. All discretionary rules or discretionary provisions in a rule over which the department has jurisdiction, in whole or in part, may be subject to waiver.

7.28(1) *Definitions.* The following terms apply to the interpretation and application of this rule:

"Discretionary rule" or *"discretionary provisions in a rule"* means rules or provisions in rules resulting from a delegation by the legislature to the department to create a binding rule to govern a given issue or area. The department is not interpreting any statutory provision of the law promulgated by the legislature in a discretionary rule. Instead, a discretionary rule is authorized by the legislature when the legislature has delegated the creation of binding rules to the department and the contents of such rules are at the discretion of the department. A rule that contains both discretionary and interpretive provisions is deemed to be a discretionary rule to the extent of the discretionary provisions in the rule.

"Interpretive rules" or *"interpretive provisions in rules"* means rules or provisions in rules which define the meaning of a statute or other provision of law or precedent where the department does not possess the delegated authority to bind the courts to any extent with its definition.

"Waiver" means a department action which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

7.28(2) *Scope of rule.*

a. This rule creates generally applicable standards and a generally applicable process for granting individual waivers from the discretionary rules or discretionary provisions in rules adopted by the department in situations where no other specifically applicable law provides for waivers. To the extent another more specific provision of law purports to govern the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this rule with respect to any waiver from that rule.

b. The waiver provisions set forth in this rule do not apply to rules over which the department does not have jurisdiction or when issuance of the waiver would be inconsistent with any applicable statute, constitutional provision or other provision of law.

7.28(3) *Applicability of this rule.*

a. This rule applies only to waiver of those rules that are within the exclusive rule-making authority of the department. This rule shall not apply to interpretive rules that merely interpret or construe the meaning of a statute, or other provision of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its interpretation or construction. Thus, this waiver rule applies to discretionary rules and discretionary provisions in rules, and not to interpretive rules.

b. The application of this rule is strictly limited to petitions for waiver filed outside of a contested case proceeding. Petitions for waiver from a discretionary rule or discretionary provisions in a rule filed after the commencement of a contested case as provided in rule 701—7.16(17A) will be treated as an issue of the contested case to be determined by the presiding officer of the contested case.

7.28(4) *Authority to grant a waiver.* The director may not issue a waiver under this rule unless:

a. The legislature has delegated authority sufficient to justify the action; and

b. The waiver is consistent with statutes and other provisions of law. No waiver from any mandatory requirement imposed by statute may be granted under this rule.

7.28(5) *Criteria for waiver.* In response to a petition, the director may, in the director's sole discretion, issue an order granting a waiver from a discretionary rule or a discretionary provision in a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person, if the director finds that the waiver is consistent with subrules 7.28(3) and 7.28(4) and if all of the following criteria are also met:

a. The waiver would not prejudice the substantial legal rights of any person;

b. The rule or provisions of the rule are not specifically mandated by statute or another provision of law;

c. The application of the rule or rule provision would result in an undue hardship or injustice to the petitioner; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule or rule provision for which the waiver is requested.

7.28(6) *Director's discretion.* The final decision to grant or deny a waiver shall be vested in the director. This decision shall be made at the sole discretion of the director based upon consideration of relevant facts.

7.28(7) *Burden of persuasion.* The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant the petitioner a waiver based upon the criteria contained in subrule 7.28(5).

7.28(8) *Form and contents of petition.*

a. Department forms. A petition for waiver may be filed using the form available on the department's portal, GovConnectIowa. Alternatively, a petition for waiver may be filed using the form available on the department's website, tax.iowa.gov/forms.

b. Manually created petitions.

(1) Persons that do not use the department's portal, GovConnectIowa, or the form available on the department's website shall follow the following format:

IOWA DEPARTMENT OF REVENUE

Name of Petitioner	*	PETITION FOR
Address of Petitioner	*	WAIVER
Type of Tax at Issue	*	Docket No. _____
	*	

(2) A manually created petition for waiver must contain all of the following, where applicable and known to the petitioner:

1. The name, address, email address, telephone number, and case number or state identification number of the entity or person for whom a waiver is being requested;

2. A description and citation of the specific rule or rule provisions from which a waiver is being requested;

3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend;

4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition, and a statement of reasons that the petitioner believes will justify a waiver;

5. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed waiver, including audits, notices of assessment, refund claims, appeals, contested case hearings, or investigative reports relating to the activity within the last five years;

6. Any information known to the petitioner relating to the department's treatment of similar cases;

7. The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver;

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver;

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver;

10. Signed releases of information authorizing persons with knowledge of relevant facts to furnish the department with information relating to the waiver; and

11. Signature by the petitioner at the conclusion of the petition attesting to the accuracy and truthfulness of the information set forth in the petition.

7.28(9) *Filing of petition.* A petition for waiver must be filed using one of the methods described in subrule 7.3(1).

7.28(10) *Additional information.* Prior to issuing an order granting or denying a waiver, the director may request additional information from the petitioner relating to the petition and surrounding circumstances. The director may, on the director's own motion, or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner or the petitioner's representative, or both, and the director to discuss the petition and surrounding circumstances.

7.28(11) *Notice of petition for waiver.* The petitioner shall provide, within 30 days of filing the petition for waiver, a notice consisting of a concise summary of the contents of the petition for waiver and stating that the petition is pending. Such notice shall be mailed by the petitioner to all persons entitled to such notice. Such persons to whom notice must be mailed include, but are not limited to, the director and all parties to the petition for waiver, or the parties' representatives. The petitioner must then file written notice to the department's legal services section by mail to the address listed in paragraph 7.3(1)*"c"* or by email to the address provided in paragraph 7.3(1)*"b,"* attesting that the notice has been mailed. The names, addresses and telephone numbers of the persons to whom the notices were mailed shall be included in the filed written notice. The department has the discretion to give such notice to persons other than those persons notified by the petitioner.

7.28(12) *Ruling on a petition for waiver.* An order granting or denying a waiver must conform to the following:

a. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or rule provision to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the narrow and precise scope and operative time period of a waiver, if one is issued.

b. Conditions. The director may condition the grant of a waiver on any conditions which the director deems to be reasonable and appropriate in order to protect the public health, safety and welfare.

7.28(13) *Time period for waiver; extension.* Unless otherwise provided, an order granting a petition for waiver will be effective for 12 months from the date the order granting the waiver is issued. Renewal of a granted waiver is not automatic. To renew the waiver beyond the 12-month period, the petitioner must file a new petition requesting a waiver. The renewal petition will be governed by the provisions in this rule and must be filed prior to the expiration date of the previously issued waiver or extension of waiver. Even if the order granting the waiver was issued in a contested case proceeding, any request for

an extension shall be filed with and acted upon by the director. However, renewal petitions must request an extension of a previously issued waiver. Granting the extension of the waiver is at the director's sole discretion and must be based upon whether the factors set out in subrules 7.28(4) and 7.28(5) remain valid.

7.28(14) *Time for ruling.* The director shall grant or deny a petition for waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees in writing to a later date or the director indicates in a written order that it is impracticable to issue the order within the 120-day period.

7.28(15) *When deemed denied.* Failure of the director to grant or deny a waiver within the 120-day or the extended time period shall be deemed a denial of that petition.

7.28(16) *Service of orders.* Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

7.28(17) *Record keeping.* The department is required to maintain a record of all petitions for waiver and rulings granting or denying petitions for waiver.

a. *Petitions for waiver.* The department shall maintain a record of all petitions for waiver available for public inspection. Such records will be indexed and filed and made available for public inspection.

b. *Report of orders granting or denying a waiver.* All orders granting or denying a waiver shall be submitted on the Internet site as prescribed in Iowa Code section 17A.9A.

7.28(18) *Cancellation of waiver.* A waiver issued pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the director issues an order finding any of the following:

a. The person who obtained the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient, and no other means exist to protect the substantial legal rights of any person; or

c. The person who obtained the waiver has failed to comply with all of the conditions in the waiver order.

7.28(19) *Violations.* A violation of a condition in a waiver order shall be treated as a violation of the particular rule or rule provision for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule or rule provision at issue.

7.28(20) *Defense.* After an order granting a waiver is issued, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked, unless subrules 7.28(18) and 7.28(19) are applicable.

7.28(21) *Hearing and appeals.*

a. Appeals from a decision granting or denying a waiver in a contested case proceeding shall be in accordance with the rules governing hearings and appeals from decisions in contested cases. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver request, unless a different time is provided by rule or statute, such as provided in the area of license revocation (see rule 701—7.39(17A)).

b. The provisions of Iowa Code sections 17A.10 to 17A.18A and rule 701—7.19(17A) regarding contested case proceedings shall apply to any petition for waiver of a rule or provisions in a rule filed within a contested case proceeding. A petition for waiver of a provision in a rule outside of a contested case proceeding will not be considered under the statutes or rule 701—7.19(17A). Instead, the director's decision on the petition for waiver is considered to be "other agency action."

This rule is intended to implement Iowa Code section 17A.9A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.29(17A) Petition for rule making.

7.29(1) *Filing, form, and contents of petition.*

a. Filing. Any person or agency may file a petition for rule making using one of the methods described in subrule 7.3(1).

b. Department forms. A petition may be filed using the form available on GovConnectIowa or the form available on the department's website, tax.iowa.gov/forms.

c. Manually created petitions.

(1) Persons that do not use the form available on GovConnectIowa, or the form available on the department's website, shall follow the following format:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner)	*	PETITION FOR
for the (adoption, amendment, or	*	RULE MAKING
repeal) of rules relating to (state	*	
subject matter).	*	

(2) The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.
3. A brief summary of the petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed rule making, including audits, notices of assessment, refund claims, appeals, contested case hearings, or investigative reports relating to the activity within the last five years.
6. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by or interested in the proposed action which is the subject of the petition.
7. Any request by the petitioner for a meeting.
8. Any other matters deemed relevant that are not covered by the above requirements.

d. File-stamped copy. The department will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose.

7.29(2) *Form signed and dated.* The petition must be signed and dated by the petitioner or the petitioner's representative. It must also include the name, mailing address, telephone number, and email address of the petitioner and of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

7.29(3) *Denial by department.* The department may deny a petition because it does not substantially conform to the required form or because all the required information has not been provided.

7.29(4) *Briefs.* The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

7.29(5) *Status of petition.* Inquiries concerning the status of a petition for rule making may be made to the department's administrative rules coordinator by mail at the address listed in paragraph 7.3(1)*"c"* or by email to the address provided in paragraph 7.3(1)*"b."*

7.29(6) *Informal meeting.* If requested in the petition by the petitioner, the department may schedule an informal meeting between the petitioner and the department, or a member of the staff of the department, to discuss the petition. The department may request that the petitioner submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

7.29(7) *Action required.* Within 60 days after the filing of the petition, or within an extended period as agreed to by the petitioner, the department must, in writing, either: (a) deny the petition and notify the petitioner of the department's action and the specific grounds for the denial; or (b) grant the petition and notify the petitioner that the department has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial of the petition or the granting of the petition on the date that the department mails or delivers the required notification to the petitioner. All orders granting or denying a petition shall be submitted to the administrative rules review committee.

7.29(8) *New petition.* Denial of a petition because the petition does not substantially conform to the required form does not preclude the filing of a new petition on the same subject when the new petition contains the required information that was the basis for the original denial.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6988C**, IAB 4/19/23, effective 5/24/23]

701—7.30(9C,91C) Procedure for nonlocal business entity bond forfeitures. Upon the failure of a transient merchant or an out-of-state contractor to pay any taxes payable, the amount of bond posted with the secretary of state by the transient merchant or out-of-state contractor necessary to pay the tax shall be forfeited. The following subrules shall govern the procedure for that forfeiture.

7.30(1) *Definitions.*

a. "Nonlocal business entity" is either an out-of-state contractor or a transient merchant as those terms are defined in paragraphs 7.30(1)*"b"* and *"f."*

b. "Out-of-state contractor" means a general contractor, subcontractor, architect, engineer, or other person who contracts to perform in this state construction or installation of structures or other buildings or any other work covered by Iowa Code chapter 103A and whose principal place of business is outside Iowa.

c. "Taxes payable by a transient merchant" refers to all taxes administered by the department, and penalties, interest, and fees which the department has previously determined to be due by assessment or due as a result of an appeal from an assessment.

d. "Taxes payable by an out-of-state contractor" means tax, penalty, interest, and fees which the department, another state agency, or a subdivision of the state, has determined to be due by assessment or due as a result of an appeal from an assessment. The tax assessed must accrue as the result of a contract to perform work covered by Iowa Code chapter 103A.

e. "Taxes payable" means any amount referred to in paragraphs 7.30(1)*"c"* and *"d"* above.

f. "Transient merchant" shall be defined, for the purposes of this rule, as that term is defined in Iowa Code section 9C.1.

7.30(2) *Increases in existing bonds.* If an out-of-state contractor has on file with the secretary of state a bond for any particular contract and for that particular contract the contractor has tax due and owing but unpaid and this tax is greater than the amount of the bond, the department shall require the out-of-state contractor to increase the bond on file with the secretary of state in an amount sufficient to pay tax liabilities which will become due and owing under the contract in the future.

7.30(3) *Responsibility for notification.* Concerning taxes which are payable by an out-of-state contractor but which are not administered by the department of revenue, it shall be the duty of the department or subdivision of Iowa state government to which the taxes are owed to notify the department of revenue of the taxes payable by the out-of-state contractor in order to institute bond forfeiture proceedings or an increase in the amount of the bond which the out-of-state contractor must post.

7.30(4) *Initial notification.* After it is determined that a bond ought to be forfeited, notice of this intent shall be sent to the nonlocal business entity and its surety of record, if any. Notice sent to the nonlocal business entity or its surety shall be sent to the last-known address as reflected in the records of the secretary of state. The notice sent to an out-of-state contractor shall also be mailed to the contractor's registered agent for service of process, if any, within Iowa. This notice may be sent by ordinary mail. The notice shall state the intent to demand forfeiture of the nonlocal business entity's bond, the amount of bond to be forfeited, the nature of the taxes alleged to be payable, the period for which these taxes

are due, and the department or subdivision of Iowa to which the taxes are payable. The notice shall also state the statutory authority for the forfeiture and the right to a hearing upon timely application.

7.30(5) *Protest of bond forfeiture.* The application of a nonlocal business entity for a hearing shall be written and substantially in the form set out for protests of other department action in rule 701—7.9(17A). The caption of the application shall be basically in the form set out in subrule 7.9(6) except the type of proceeding shall be designated as a bond forfeiture collection. The body of the application for hearing must substantially resemble the body of the protest described in subrule 7.9(6). However, referring to numbered paragraph 7.9(6)*"b"*(2)"1," the nonlocal business entity shall state the date of the notice described in subrule 7.30(4). With regard to subparagraph 7.9(6)*"b"*(2), in the case of a tax payable which is not administered by the department, the errors alleged may be errors on the part of other departments or subdivisions of the state of Iowa. The application for hearing shall be filed with the department's administrative law judge in the manner described in rule 701—7.10(17A). The docketing of an application for hearing shall follow the procedure for the docketing of an appeal under that rule.

7.30(6) *Prehearing, hearing and rehearing procedures.* The following rules are applicable to preliminary and contested case proceedings under this rule: 701—7.3(17A) to 701—7.15(17A) and 701—7.17(17A) to 701—7.23(17A).

7.30(7) *Sureties and state departments other than revenue.*

a. A surety shall not have standing to contest the amount of any tax payable.

b. If there exist taxes payable by an out-of-state contractor and these taxes are payable to a department or subdivision of state government other than the department of revenue, that department or subdivision shall be the real party in interest to any proceeding conducted under this rule, and it shall be the responsibility of that department or subdivision to provide its own representation and otherwise bear the expenses of representation.

This rule is intended to implement Iowa Code sections 9C.4 and 91C.7.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21]

701—7.31(421) Abatement of unpaid tax. Rescinded **ARC 7192C**, IAB 12/13/23, effective 1/17/24.

701—7.32(421) Time and place of taxpayer interviews. The time and place of taxpayer interviews are to be fixed by an employee of the department, and employees of the department are to endeavor to schedule a time and place that are reasonable under the circumstances.

7.32(1) *Time of taxpayer interviews.* The department will schedule the day(s) for a taxpayer interview during a normally scheduled workday(s) of the department, during the department's normal business hours. The department will schedule taxpayer interviews throughout the year without regard to seasonal fluctuations in the business of particular taxpayers or their representatives. The department will, however, work with taxpayers or their representatives to try to minimize any adverse effects in scheduling the date and time of a taxpayer interview.

7.32(2) *Type of taxpayer interview.*

a. The department will determine whether a taxpayer interview will be an office interview (i.e., an interview conducted at a department office) or a field interview (i.e., an interview conducted at the taxpayer's place of business or residence, or some other location that is not a department office) based on which form of interview will be more conducive to effective and efficient tax administration.

b. The department will grant a request to hold an office interview at a location other than a department office in case of a clear need, such as when it would be unreasonably difficult for the taxpayer to travel to a department office because of the taxpayer's advanced age or infirm physical condition or when the taxpayer's books, records, and source documents are too cumbersome for the taxpayer to bring to a department office.

7.32(3) *Place of taxpayer interview.* The department will make an initial determination of the place for an interview, including the department regional office to which an interview will be assigned, based on the address shown on the return for the tax period to be examined. Requests by taxpayers to transfer the place of interview will be resolved on a case-by-case basis, using the criteria set forth in paragraph 7.32(3)*"c."*

a. Office taxpayer interviews. An office interview of an individual or sole proprietorship generally is based on the residence of the individual taxpayer. An office interview of a taxpayer which is an entity generally is based on the location where the taxpayer entity's original books, records, and source documents are maintained.

b. Field taxpayer interviews. A field interview generally will take place at the location where the taxpayer's original books, records, and source documents pertinent to the interview are maintained. In the case of a sole proprietorship or taxpayer entity, this usually will be the taxpayer's principal place of business. If an interview is scheduled by the department at the taxpayer's place of business, which is a small business and the taxpayer represents to the department in writing that conducting the interview at the place of business would essentially require the business to close or would unduly disrupt business operations, the department upon verification will change the place of interview.

c. Requests by taxpayers to change place of interview. The department will consider, on a case-by-case basis, written requests by taxpayers or their representatives to change the place that the department has set for an interview. In considering these requests, the department will take into account the following factors:

(1) The location of the taxpayer's current residence;

(2) The location of the taxpayer's current principal place of business;

(3) The location where the taxpayer's books, records, and source documents are maintained;

(4) The location at which the department can perform the interview most efficiently;

(5) The department resources available at the location to which the taxpayer has requested a transfer; and

(6) Other factors which indicate that conducting the interview at a particular location could pose undue inconvenience to the taxpayer.

d. Granting of requests to change place of interview. A request by a taxpayer to transfer the place of interview generally will be granted under the following circumstances:

(1) If the current residence of the taxpayer in the case of an individual or sole proprietorship, or the location where the taxpayer's books, records, and source documents are maintained, in the case of a taxpayer entity, is closer to a different department office than the office where the interview has been scheduled, the department normally will agree to transfer the interview to the closer department office.

(2) If a taxpayer does not reside at the residence where an interview has been scheduled, the department will agree to transfer the examination to the taxpayer's current residence.

(3) If, in the case of an individual, a sole proprietorship, or a taxpayer entity, the taxpayer's books, records, and source documents are maintained at a location other than the location where the interview has been scheduled, the department will agree to transfer the interview to the location where the taxpayer's books, records, and source documents are maintained.

(4) The location of the place of business of a taxpayer's representative generally will not be considered in determining the place for an interview. However, the department in its sole discretion may determine, based on the factors described in paragraph 7.32(3)*"c,"* to transfer the place of interview to the representative's office.

(5) If any applicable period of limitations of assessment and collection provided in the Iowa Code will expire within 13 months from the date of a taxpayer's request to transfer the place of interview, the department may require, as a condition to the transfer, that the taxpayer agree in writing to extend the limitations period up to one year.

(6) The department is not required to transfer an interview to an office that does not have adequate resources to conduct the interview.

(7) Notwithstanding any other provision of this rule, employees of the department may decline to conduct an interview at a particular location if it appears that the possibility of physical danger may exist at that location. In these circumstances, the department may transfer an interview to a department office and take any other steps reasonably necessary to protect its employees.

(8) Nothing in this rule shall be interpreted as precluding the department from initiating the transfer of an interview if the transfer would promote the effective and efficient conduct of the interview. Should

a taxpayer request that such a transfer not be made, the department will consider the request according to the principles and criteria set forth in paragraph 7.32(3)*"c."*

(9) Regardless of where an examination takes place, the department may visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as inventory or asset verification. The department generally will visit for these purposes on a normal workday of the department during the department's normal business hours.

7.32(4) *Audio recordings of taxpayer interviews.*

a. A taxpayer is permitted, upon advance notice to the department, to make an audio recording of any interview of the taxpayer by the department relating to the determination or collection of any tax. The recording of the interview is at the taxpayer's own expense and must be with the taxpayer's own equipment.

b. Requests by taxpayers to make audio recordings must be addressed to the department employee who is conducting the interview and must be received by no later than ten calendar days before the interview. If ten calendar days' advance notice is not given, the department may, in its discretion, conduct the interview as scheduled or set a new date.

c. The department employee conducting the interview will approve the request to record the interview if:

(1) The taxpayer (or representative) supplies the recording equipment;

(2) The department may produce its own recording of the proceedings;

(3) The recording takes place in a suitable location; and

(4) All participants in the proceedings other than department personnel consent to the making of the audio recording, and all participants identify themselves and their role in the proceedings.

d. A department employee is also authorized to record any taxpayer interview, if the taxpayer receives prior notice of the recording and is provided with a transcript or a copy of the recording upon the taxpayer's request.

e. Requests by taxpayers (or their representatives) for a copy or transcript of an audio recording produced by the department must be addressed to the employee conducting the interview and must be received by the department no later than 30 calendar days after the date of the recording. The taxpayer must pay the costs of duplication or transcription.

f. At the beginning of the recording of an interview, the department employee conducting the interview must state the employee's name, the date, the time, the place, and the purpose of the interview. At the end of the interview, the department employee will state that the interview has been completed and that the recording has ended.

g. When written records are presented or discussed during the interview being recorded, they must be described in sufficient detail to make the audio recording a meaningful record when matched with the other documentation contained in the case file.

This rule is intended to implement Iowa Code section 421.60.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12]

701—7.33(421) Mailing to the last-known address or personal delivery of notices of assessment and refund denial letters. Taxpayers must update their address with the department in order to receive notices of refunds of tax, notices of assessment, and notices of refund claim denials. When such a notice is sent to a taxpayer's last-known address, the notice is legally effective even if the taxpayer never receives it. A taxpayer's authorized representative is responsible for keeping the representative's address updated with the department. When such a notice is sent to a representative's last-known address, the notice is legally effective even if the representative never receives it.

7.33(1) *Failure by department to mail to last-known address or personally deliver.*

a. If the department fails to either mail a notice of assessment to the taxpayer's last-known address or personally deliver the notice to the taxpayer, interest is waived for the month the failure occurs through the month of correct mailing or personal delivery.

b. In addition, if the department fails to either mail to the taxpayer's last-known address or personally deliver to the taxpayer a notice of assessment or denial of a claim for refund or fails to mail

or personally deliver a copy of the notice to the taxpayer's authorized representative, if applicable, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered or for a period not to exceed one year, whichever is the lesser period.

c. Collection activities, except in the case of a jeopardy assessment, shall be suspended and the statute of limitations for assessment and collection of the tax shall be tolled during the period in which interest is waived.

7.33(2) *Determination of last-known address.*

a. A taxpayer's last-known address for a particular tax type shall be one of the following most recently updated in the department's records:

(1) The address provided in an application to register or receive a permit for a particular tax type;

(2) The address used on the most recent filed and processed Iowa tax return of a particular tax type;

(3) The address received by the department in a written, concise statement the taxpayer mailed to: Changes in Name or Address, Iowa Department of Revenue, P.O. Box 10465, Des Moines, Iowa 50306;

(4) The address provided by the taxpayer in GovConnectIowa;

(5) The address provided by the taxpayer in any correspondence to the department;

(6) The address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

b. While the determination of last-known address may differ by tax type, a notice of assessment or refund claim denial will be considered to be mailed to the last-known address if it is mailed to the taxpayer's last-known address used for another tax type.

7.33(3) *Mail or personal delivery to a taxpayer.* The following shall constitute personal delivery to a taxpayer:

a. Personal service upon a taxpayer by any method deemed sufficient to constitute personal service of an original notice pursuant to the Iowa Rules of Civil Procedure.

b. Providing a notice of assessment or refund claim denial to the taxpayer by electronic means based on the taxpayer's election to receive electronic communications in GovConnectIowa.

c. Mailing to an address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

d. By any other method that is reasonably calculated to result in the taxpayer's actually receiving the notice, if the taxpayer actually receives the notice.

7.33(4) *Mail or personal delivery to authorized representatives.* The department may mail or personally deliver a copy of a notice to an authorized representative by one of the following methods:

a. Mailing to the address used on the most recently filed and processed written authorization as described in rule 701—7.6(17A) for the taxpayer the authorized representative is representing;

b. In the case of fiduciary or inheritance tax matters, mailing to the address for the authorized representative contained on the most recently filed and processed return;

c. By providing the notice electronically through GovConnectIowa or similar method of electronic service;

d. By any method deemed sufficient to constitute personal service of an original notice pursuant to the Iowa Rules of Civil Procedure;

e. By any other method that is reasonably calculated to result in the authorized representative's actually receiving a copy of the notice, if the authorized representative actually receives a copy of the notice.

This rule is intended to implement Iowa Code section 421.60.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 5940C**, IAB 10/6/21, effective 11/10/21; **ARC 6550C**, IAB 10/5/22, effective 11/14/22]

701—7.34(421) Power of attorney. Rescinded **ARC 5532C**, IAB 3/24/21, effective 4/28/21.

701—7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied.

7.35(1) A taxpayer may designate in separate written instructions accompanying the payment the type of tax and tax periods to which any voluntary payment is to be applied. The taxpayer may not designate the application of payments which are the result of enforced collection.

7.35(2) Enforced collection includes, but is not limited to, garnishment of wages, bank accounts, or payments due the taxpayer, or seizure of assets.

This rule is intended to implement Iowa Code section 421.60.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12]

701—7.36(421) Tax return preparers.

7.36(1) *Definitions.* For the purposes of this rule and for Iowa Code sections 421.62, 421.63, and 421.64, the following definitions apply:

"An enrolled agent enrolled to practice before the federal Internal Revenue Service (IRS) pursuant to 31 CFR §10.4" means an individual who has an active status as an enrolled agent under 31 CFR §10.4(a) or (d) and is not currently under suspension or disbarment from practice before the IRS. An enrolled agent does not include an enrolled retirement plan agent under 31 CFR §10.4(b) or a registered tax return preparer under 31 CFR §10.4(c).

"An individual admitted to practice law in this state or another state" means an individual who has an active license to practice law in this state or another state, is considered in good standing with the licensing authority of this or another state, and is currently authorized to engage in the practice of law.

"An individual licensed as a certified public accountant or a licensed public accountant under Iowa Code chapter 542 or a similar law of another state" means an individual who has an active certified public accountant license or an active public accountant license under Iowa Code chapter 542 or a similar law of another state and is in good standing with the Iowa accountancy examining board or similar authority of another state.

"Hour of continuing education" means a minimum of 50 minutes spent by a tax return preparer in actual attendance at or completion of an IRS-approved provider of continuing education course.

"Income tax return or claim for refund" means any return or claim for refund under Iowa Code chapter 422, excluding withholding returns under Iowa Code section 422.16.

"New tax preparer" means an individual who qualifies as a "tax return preparer" under Iowa Code section 421.62 for the current tax year but would not have qualified as such during any prior calendar year. See paragraph 7.36(8)*"a"* for examples regarding who qualifies as a new tax preparer.

"Tax return preparer" means any individual who, for a fee or other consideration, prepares ten or more income tax returns or claims for refund during a calendar year, or who assumes final responsibility for completed work on such income tax returns or claims for refund on which preliminary work has been done by another individual.

"Tax return preparer" does not include any of the following:

1. An individual licensed as a certified public accountant or a licensed public accountant under Iowa Code chapter 542 or a similar law of another state.
2. An individual admitted to practice law in this state or another state.
3. An enrolled agent enrolled to practice before the federal IRS pursuant to 31 CFR §10.4.
4. A fiduciary of an estate, trust, or individual, while functioning within the fiduciary's legal duty and authority with respect to that individual or that estate or trust or its testator, trustor, grantor, or beneficiaries.
5. An individual who prepares the tax returns of the individual's employer, while functioning within the individual's scope of employment with the employer.
6. An individual employed by a local, state, or federal government agency, while functioning within the individual's scope of employment with the government agency.
7. An employee of a tax return preparer, if the employee provides only clerical or other comparable services and does not sign tax returns.

See paragraph 7.36(8)*"a"* for examples regarding who qualifies as a tax return preparer.

7.36(2) *Penalty for tax return preparer's failure to include preparer tax identification number (PTIN) on income tax returns or claims for refund.* On or after January 1, 2020, a tax return preparer who fails to include the tax return preparer's PTIN on any income tax return or claim for refund prepared by the tax return preparer and filed with the department shall pay to the department a penalty of $50 for each violation, unless the tax return preparer shows that the failure was reasonable under the circumstances and not willful or reckless conduct. The maximum aggregate penalty imposed upon a tax return preparer pursuant to Iowa Code section 421.62 and this rule shall not exceed $25,000 during any calendar year. See paragraph 7.36(8)*"c"* for examples pertaining to the tax return preparer PTIN requirement.

7.36(3) *Tax return preparer continuing education requirement.* Beginning January 1, 2020, and every year thereafter, a tax return preparer shall complete a minimum of 15 hours of continuing education courses each year. At least two hours of continuing education shall be on professional ethics, and the remaining hours shall pertain to federal or state income tax. Each course shall be taken from an IRS-approved provider of continuing education. If a course offered by an IRS-approved provider is primarily on state-specific income tax content, the course will qualify for the continuing education requirements under Iowa Code section 421.64 and this rule, even if such course does not count toward federal continuing professional education. Tax return preparers who complete more than the required 15 hours of continuing education in one calendar year may not count the excess hours toward a subsequent year's requirement. See paragraph 7.36(8)*"b"* for examples pertaining to the tax return preparer continuing education requirement.

7.36(4) *Preparation of income tax returns or claims for refund.* An individual prepares an income tax return or claim for refund when the individual signs (or should sign) a return, either because the individual completes the return or because the individual assumes final responsibility for preliminary work completed by other individuals.

7.36(5) *Approved providers and courses.*

a. Approved providers of continuing education. Any IRS-approved provider of continuing education is acceptable. It is not mandatory that a continuing education course be taken from an Iowa provider.

b. Approved continuing education course subject matters. All continuing education courses shall be on the topics of federal or state income tax or professional ethics.

c. Approved continuing education format. Continuing education courses that satisfy the requirements of Iowa Code section 421.64 and this rule may be taken for credit in person, online, or by self-study, as long as they are administered by an IRS-approved provider of continuing education.

7.36(6) *Reporting hours of continuing education and retaining records.*

a. Reporting hours of continuing education to the department. Tax return preparers shall report their continuing education hours to the department by February 15 of the calendar year following the year in which hours were completed to be eligible to prepare income tax returns or claims for refund. Hours must be reported using IA Form 78-012. If a tax return preparer fails to complete the required minimum hours of continuing education by the date prescribed in this subrule, the individual must show that failure to do so was reasonable under the circumstances and not willful or reckless conduct. IRS-approved providers are not required to report continuing education courses to the department.

b. Retaining records of continuing education. Tax return preparers are required to retain records of continuing education completion for a minimum of five years. This record retention shall include, but is not limited to, certificates of completion if offered by the IRS-approved provider of continuing education upon completion of a course.

7.36(7) *Reinstatement of a tax return preparer.* When a tax return preparer fails to complete the minimum 15 hours of continuing education courses as required by Iowa Code section 421.64 and this rule but demonstrates that the failure was reasonable under the circumstances and not willful or reckless conduct, the department may require the tax return preparer to make up any uncompleted hours and submit a completed IA Form 78-012 to the department by a date set by the department before the tax return preparer may engage in activity as a tax return preparer.

7.36(8) *Examples.*

a. Tax return preparer examples.

EXAMPLE 1: During the 2020 calendar year and every prior year, an individual, N, prepares nine or fewer income tax returns or claims for refund described in this rule for a fee or other consideration. During the 2021 calendar year, N, for a fee or other consideration, prepares ten income tax returns or claims for refund described in this rule. N meets the definition of a tax return preparer for the 2021 calendar year. Therefore, N will be subject to the penalty for failure to include N's PTIN on every income tax return or claim for refund described in this rule that N prepares during the 2021 calendar year. However, N also qualifies as a "new tax preparer" for the 2021 calendar year because this is the first year N satisfies the definition of a "tax return preparer." Therefore, N does not need to complete 15 hours of continuing education courses during 2020 to prepare returns in 2021, but N will need to complete the minimum 15 hours of continuing education courses during the 2021 calendar year to be eligible to prepare returns during the 2022 calendar year if N will meet the definition of "tax return preparer" in 2022.

EXAMPLE 2: An individual, B, prepares ten income tax returns or claims for refund described in this rule during the 2019 calendar year for a fee or other consideration. Therefore, B is a tax return preparer. However, B is not required to complete any hours of continuing education courses prior to preparing returns in 2020, nor will B incur a penalty for failing to include B's PTIN on any of those returns prepared in calendar year 2019 because the requirements described in this rule do not take effect until January 1, 2020. Assume B continues to prepare income tax returns or claims for refund described in this rule for a fee or other consideration during the 2020 calendar year, but B only prepares a total of nine such tax returns throughout the entire 2020 calendar year. B does not complete any hours of continuing education courses during the 2020 calendar year. B will not be eligible to prepare ten or more income tax returns or refund claims described in this rule for a fee or other consideration during the 2021 calendar year because even though B did not prepare ten or more income tax returns or claims for refund in 2020, B would have been classified as a tax return preparer in 2019. Thus, B is not considered a new tax preparer for purposes of the 2021 calendar year.

b. Continuing education requirement examples.

EXAMPLE 3: During the 2020 calendar year, an individual, P, prepares ten income tax returns or claims for refund described in this rule for a fee or other consideration. Therefore, P is a tax return preparer. During the 2020 calendar year, P also completes 30 hours of continuing education courses from programs offered by an IRS-approved provider of continuing education, 4 hours of which are on professional ethics and the remaining hours on income tax. P is eligible to prepare returns during the 2021 calendar year. However, P must complete 15 additional hours of continuing education courses offered by an IRS-approved provider, including 2 hours on professional ethics and the remaining hours on income tax, during the 2021 calendar year to be eligible to prepare returns during the 2022 calendar year if P will meet the definition of "tax return preparer" in 2022. P's excess hours completed in 2020 may not be applied toward the 15 hours of continuing education courses that P must complete in 2021 to be eligible to prepare returns in 2022.

EXAMPLE 4: During the 2020 calendar year, a tax return preparer, P, completes 12 hours of continuing education courses from programs offered by an IRS-approved provider of continuing education. Two of the hours are on professional ethics, and the rest relate to income tax. P is not eligible to prepare income tax returns or claims for refund during the 2021 calendar year, regardless of the year of the returns P is preparing, because P has not completed a total of 15 continuing education hours during the 2020 calendar year. During the 2021 calendar year, P completes 15 hours of continuing education courses from programs offered by an IRS-approved provider. Two of P's hours are from professional ethics courses, and the remaining 13 hours are from income tax courses. P is eligible to prepare returns during the 2022 calendar year, regardless of the years of the returns P prepares. However, P is still ineligible to prepare returns for the remaining duration of the 2021 calendar year, regardless of the years of the returns P wishes to prepare.

c. PTIN requirement examples.

EXAMPLE 5: An individual, X, works at a firm in the business of preparing income tax returns for a fee or other consideration. X completes a substantial amount of preliminary work on ten returns described in this rule during the scope of X's employment (that are not the returns of X's employer) during the 2020

calendar year, but X does not assume final responsibility for the work or sign the returns. Instead, X's supervisor, Y, reviews the work completed by X and signs the returns. Y is a tax return preparer because Y assumed final responsibility for the returns. Therefore, Y's PTIN is required on all of the returns. X's PTIN is not required on any of the returns, nor will X incur any penalties for omitting X's PTIN on the returns.

EXAMPLE 6: An individual, X, has a partnership with another individual, Y, in which X and Y prepare income tax returns for a fee or other consideration. X completes ten returns described in this rule during the 2020 calendar year. However, before X signs or files the returns, X asks Y to review the returns. Y reviews the returns and suggests substantial changes, but Y then gives the returns back to X. X makes the necessary changes, then signs and files the returns. X is a tax return preparer. X's PTIN is required on all of the returns because X assumed final responsibility for the returns. Y's PTIN is not required on any of the returns. If X fails to include X's PTIN on any of the returns, X will incur a $50 civil penalty for each violation unless X shows that X's failure was reasonable under the circumstances and not willful or reckless conduct.

EXAMPLE 7: An individual, X, completes five income tax returns and five claims for refund described in this rule for a fee or other consideration during the 2020 calendar year. X does not sign the returns, even though no other paid tax return preparer reviewed X's work and took final responsibility for the return. X's PTIN is required on all of the returns because X is a paid tax return preparer for those returns, even though X failed to sign the returns as required. X is subject to a fine of $50 per return that did not contain the required PTIN because X is a tax return preparer.

This rule is intended to implement Iowa Code sections 421.62, 421.63, and 421.64.

[**ARC 5190C**, IAB 9/23/20, effective 10/28/20]

701—7.37(441) Appeals of director's rejection of assessor appointment or reappointment.

7.37(1) *Written request for appeal.* Any assessor or conference board wishing to contest the director's rejection of the conference board's appointment of an assessor under 701—subrule 72.15(4) or reappointment of an assessor under 701—subrule 72.16(3) shall file an appeal, in writing, within 30 days of the director's notice of decision. Any person who does not seek an appeal within 30 days of the director's notice shall be precluded from challenging the director's decision.

7.37(2) *Procedures.* Appeals will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

a. Subrules 7.3(2) and 7.3(3);

b. Rule 701—7.7(17A);

c. Rule 701—7.8(17A);

d. The introductory paragraph of rule 701—7.9(17A) and subrule 7.9(7);

e. Subrules 7.12(1), 7.12(2), and 7.12(4);

f. Subrule 7.13(1);

g. Subrules 7.14(1) to 7.14(3);

h. Rule 701—7.15(17A);

i. Rule 701—7.16(17A);

j. Rule 701—7.17(17A);

k. Rule 701—7.18(17A);

l. Subrule 7.19(1); subrules 7.19(3) through 7.19(7); subrule 7.19(8), except paragraph 7.19(8)*"b"* related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.19(9) and 7.19(13);

m. Rule 701—7.20(17A);

n. Rule 701—7.21(17A);

o. Rule 701—7.22(17A); and

p. Rule 701—7.23(17A).

7.37(3) *Presiding officer.* The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any

matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.37(4) *Contents of the appeal.* The appeal shall contain the following in separate numbered paragraphs:

a. A statement of the department action giving rise to the appeal.

b. The date of the department action giving rise to the appeal.

c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to the particular statutes, rules, or agreement terms, if known.

e. References to and copies of any documents or other evidence relevant to the appeal.

f. Any other matters deemed relevant to the appeal.

g. A statement setting forth the relief sought.

h. The signature, mailing address, and telephone number of the person or that person's representative.

7.37(5) *Burden of proof.* The burden of proof is on the party challenging the director's decision under 701—subrule 103.15(4) or 103.16(3).

This rule is intended to implement Iowa Code section 441.6(3) and chapter 17A.

[**ARC 5288C**, IAB 11/18/20, effective 12/23/20; **ARC 6026C**, IAB 11/3/21, effective 12/8/21; **ARC 6988C**, IAB 4/19/23, effective 5/24/23; Editorial change: IAC Supplement 10/18/23]

701—7.38(441) Appeals and hearings regarding the director's intent to remove a member of the board of review.

7.38(1) *Written request for hearing.* A member of the board of review who has received a notice of intent to remove from the director and who wishes to contest the removal shall file a written request for a hearing within 30 days after the receipt of the notice of the director's intent to remove the member. Any person who does not seek a hearing within 30 days of receipt of the notice of the director's intent to remove shall be precluded from challenging the removal.

7.38(2) *Procedures.* Hearings will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

a. The introductory paragraph of rule 701—7.8(17A), excluding the first sentence of the introductory paragraph of 701—7.8(17A); and subrules 7.8(8) and 7.8(9);

b. Subrules 7.9(1) and 7.9(2);

c. Rule 701—7.10(17A);

d. Paragraphs 7.11(2)*"d"* and *"e"*;

e. Subrules 7.12(2) to 7.12(4);

f. Rule 701—7.13(17A);

g. Rule 701—7.14(17A);

h. Rule 701—7.15(17A);

i. Rule 701—7.16(17A);

j. Subrule 7.17(1); subrules 7.17(3) through 7.17(7); subrule 7.17(8), except paragraph 7.17(8)*"b"* related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.17(9), 7.17(10), and 7.17(14);

k. Rule 701—7.18(17A);

l. Rule 701—7.19(17A);

m. Rule 701—7.20(17A);

n. Rule 701—7.21(17A); and

o. Rule 701—7.22(17A).

7.38(3) *Presiding officer.* The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.38(4) *Contents of the appeal.* The appeal shall contain the following in separate numbered paragraphs:

a. A statement of the department action giving rise to the appeal.

b. The date of the department action giving rise to the appeal.

c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to the particular statutes, rules, or agreement terms, if known.

e. References to and copies of any documents or other evidence relevant to the appeal.

f. Any other matters deemed relevant to the appeal.

g. A statement setting forth the relief sought.

h. The signature, mailing address, and telephone number of the person or that person's representative.

7.38(5) *Burden of proof.* The burden of proof is on the party challenging the director's intent to remove a board member.

This rule is intended to implement Iowa Code section 441.32(2)*"e"* as enacted by 2021 Iowa Acts, House File 871, section 29, and Iowa Code chapter 17A.
[**ARC 5930C**, IAB 9/22/21, effective 10/27/21]

701—7.39(17A) Licenses.

7.39(1) *Denial of license; refusal to renew license.*

a. When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal or denial of a license, a notice, as prescribed in rule 701—7.16(17A), shall be served by the department upon the licensee or applicant. Prior to the refusal or denial of a license, the department shall give 30 days' written notice to the applicant or licensee in which to appear at a hearing to show cause why a license should not be refused or denied. In addition to the requirements of rule 701—7.16(17A), the notice shall contain a statement of facts or conduct and the provisions of law which warrant the denial of the license or the refusal to renew a license. If the licensee so desires, the licensee may file a petition as provided in subrule 7.39(3) with the presiding officer within 30 days prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule 701—7.19(17A) governing contested case proceedings shall apply.

b. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and in case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department's order or a later date fixed by order of the department or the reviewing court. See rule 481—100.3(99B) regarding gambling license applications.

7.39(2) *Revocation of license.*

a. The department shall not revoke, suspend, annul or withdraw any license until written notice is served by personal service or restricted certified mail pursuant to rule 701—7.16(17A) within the time prescribed by the applicable statute and the licensee whose license is to be revoked, suspended, annulled, or withdrawn, is given an opportunity to show at an evidentiary hearing conducted pursuant to rule 701—7.19(17A) compliance with all lawful requirements for the retention of the license. However, in the case of the revocation, suspension, annulment, or withdrawal of a sales or use tax permit, written notice will be served pursuant to rule 701—7.16(17A) only if the permit holder requests that this be done following notification, by ordinary mail, of the director's intent to revoke, suspend, annul, or withdraw the permit. In addition to the requirements of rule 701—7.16(17A), the notice shall contain a statement of facts or conduct and the provisions of law which warrant the revocation, suspension, annulment, or withdrawal of the license. A licensee whose license may be revoked, suspended, annulled, or withdrawn, may file a petition as provided in subrule 7.39(3) with the clerk prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule 701—7.19(17A) governing contested case proceedings shall apply.

b. Notwithstanding paragraph 7.39(2)*"a,"* if the department finds that public health, safety, or welfare imperatively requires emergency action and the department incorporates a finding to that effect in an order to the licensee, summary suspension of a license shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

7.39(3) *Petition.*

a. When a person desires to file a petition as provided in subrules 7.39(1) and 7.39(2), the petition to be filed shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	PETITION
(state taxpayer's name and address, and type of license)	*	Docket No. _____
	*	(filled in by Department)
	*	

b. The petition shall substantially state in separate numbered paragraphs the following:

(1) The full name and address of the petitioner;

(2) Reference to the type of license and the relevant statutory authority;

(3) Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;

(4) Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor; and

(5) The signature of the petitioner or petitioner's representative, the address of petitioner and of the petitioner's representative, and the telephone number of petitioner or petitioner's representative.

This rule is intended to implement Iowa Code section 17A.18.

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CHAPTER 10
INTEREST, PENALTY, EXCEPTIONS TO PENALTY, AND JEOPARDY ASSESSMENTS

[Prior to 12/17/86, Revenue Department[730]]

Rules 701—10.20(421) to 701—10.111(422A) are excerpted from 701—Chs 12, 30, 44, 46, 52, 58, 63, 81, 86, 88, 89, 104, IAB 1/23/91

701—10.1(421) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

10.1(1) *"Department"* means the department of revenue.

10.1(2) *"Director"* means the director of the department or authorized representative.

10.1(3) *"Taxes"* means all taxes and charges arising under Title X of the Iowa Code, which include but are not limited to individual income, withholding, corporate income, franchise, sales, use, hotel/motel, railroad fuel, equipment car, replacement tax, statewide property tax, motor vehicle fuel, and inheritance taxes and the environmental protection charge imposed upon petroleum diminution due and payable to the state of Iowa.

[**ARC 1545C**, IAB 7/23/14, effective 8/27/14]

701—10.2(421) Interest. Except where a different rate of interest is provided by Title X of the Iowa Code, the rate of interest on interest-bearing taxes and interest-bearing refunds arising under Title X is fixed for each calendar year by the director. In addition to any penalty computed, there shall be added interest as provided by law from the original due date of the return. Any portion of the tax imposed by statute which has been erroneously refunded and is recoverable by the department shall bear interest as provided in Iowa Code section 421.7, subsection 2, from the date of payment of the refund, considering each fraction of a month as an entire month. Interest which is not judgment interest is not payable on sales and use tax, local option tax, and hotel and motel tax refunds. *Herman M. Brown v. Johnson,* 248 Iowa 1143, 82 N.W.2d 134 (1957); *United Telephone Co. v. Iowa Department of Revenue,* 365 N.W.2d 647 (Iowa 1985). However, interest which is not judgment interest accrues on such refunds on or after January 1, 1995, and is payable on sales and use tax, local option tax and hotel and motel tax refunds on or after January 1, 1995.

10.2(1) *Calendar year 1982.* The rate of interest upon all unpaid taxes which are due as of January 1, 1982, will be 17 percent per annum (1.4% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after, January 1, 1982. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1982. This interest rate of 17 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1982.

EXAMPLES:

1. The taxpayer, X corporation, owes corporate income taxes assessed to it for the year 1975. The assessment was made by the department in 1977. On January 1, 1982, that assessment had not been paid. The rate of interest on the unpaid tax assessed has accrued at the rate of 9 percent per annum (0.75% per month) through December 31, 1981. Commencing on January 1, 1982, the rate of interest on the unpaid tax will thereafter accrue at the rate of 17 percent per annum for 1982 (1.4% per month). If the tax liability is not paid in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

2. The taxpayer, Y, owes retail sales taxes assessed to it for the audit period January 1, 1979, through December 31, 1982. The assessment is made on March 1, 1983. For the tax periods in which the tax became due prior to January 1, 1982, the interest rate on such unpaid sales taxes accrued at 9 percent per annum (0.75% per month). Commencing on January 1, 1982, the entire unpaid portion of the tax assessed which was delinquent at that time will begin to accrue interest at the rate of 17 percent per annum. Those portions of the tax assessed first becoming delinquent in 1982 will bear interest at the rate of 17 percent per annum (1.4% per month). In the event that any portion of the tax assessed remains unpaid on January 1, 1983, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

3. The taxpayer, Z, files a refund claim for 1978 individual income taxes in March 1982. The refund claim is allowed in May 1982, and is paid. Z is entitled to receive interest at the rate of 9 percent

per annum (0.75% per month) upon the refunded tax accruing through December 31, 1981, and is entitled to interest at the rate of 17 percent per annum (1.4% per month) upon such tax from January 1, 1982, until the refund is paid.

4. A's 1981 individual income tax liability becomes delinquent on May 1, 1982. A owes interest, commencing on May 1, 1982, at the rate of 17 percent per annum (1.4% per month). In the event that A does not pay the liability in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

5. Decedent died December 15, 1976. The inheritance tax was due 12 months after death, or December 15, 1977. Prior to the due date, the estate was granted an extension of time, until September 1, 1978, to file the return and pay the tax due. The tax, however, was paid March 15, 1982. Interest accrues on the unpaid tax during the period of the extension of time (December 15, 1977, to September 1, 1978) at the rate of 6 percent per annum. Interest accrues on the delinquent tax from September 1, 1978, through December 31, 1981, at the rate of 8 percent per annum. Interest accrues on the delinquent tax from January 1, 1982, to the date of payment on March 15, 1982, at the rate of 17 percent per annum.

6. B files a refund for sales taxes paid for the periods January 1, 1979, through December 31, 1982, in March 1983. The refund is allowed in May 1983. Since no interest is payable on sales tax refunds, B is not entitled to any interest. *Herman M. Brown Co. v. Johnson,* 248 Iowa 1143 (1957). However, interest accrues and is payable on and after January 1, 1995.

The examples set forth in these rules are not meant to be all-inclusive. In addition, other rules set forth the precise circumstance when interest begins to accrue and whether interest accrues for each month or fraction of a month or annually as provided by law. Interest accrues as provided by law, regardless of whether the department has made a formal assessment of tax.

10.2(2) *Calendar year 1983.* The rate of interest upon all unpaid taxes which are due as of January 1, 1983, will be 14 percent per annum (1.2% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after January 1, 1983. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1983. This interest rate of 14 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1983.

10.2(3) *Calendar year 1984.* The rate of interest upon all unpaid taxes which are due as of January 1, 1984, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1984. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1984. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1984.

10.2(4) *Calendar year 1985.* The rate of interest upon all unpaid taxes which are due as of January 1, 1985, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1985. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1985. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1985.

10.2(5) *Calendar year 1986.* The interest upon all unpaid taxes which are due as of January 1, 1986, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1986. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1986. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1986.

10.2(6) *Calendar year 1987.* The interest upon all unpaid taxes which are due as of January 1, 1987, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1987. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1987. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1987.

10.2(7) *Calendar year 1988.* The interest upon all unpaid taxes which are due as of January 1, 1988, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1988. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1988. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1988.

10.2(8) *Calendar year 1989.* The interest upon all unpaid taxes which are due as of January 1, 1989, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1989. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1989. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1989.

10.2(9) *Calendar year 1990.* The interest upon all unpaid taxes which are due as of January 1, 1990, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1990. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1990. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1990.

10.2(10) *Calendar year 1991.* The interest upon all unpaid taxes which are due as of January 1, 1991, will be 12 percent per annum (1.0% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1991. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1991. This interest rate of 12 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1991.

10.2(11) *Calendar year 1992.* The interest upon all unpaid taxes which are due as of January 1, 1992, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1992. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1992. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1992.

10.2(12) *Calendar year 1993.* The interest upon all unpaid taxes which are due as of January 1, 1993, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1993. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1993. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1993.

10.2(13) *Calendar year 1994.* The interest upon all unpaid taxes which are due as of January 1, 1994, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1994. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1994. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1994.

10.2(14) *Calendar year 1995.* The interest upon all unpaid taxes which are due as of January 1, 1995, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1995. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1995. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1995.

10.2(15) *Calendar year 1996.* The interest upon all unpaid taxes which are due as of January 1, 1996, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1996. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after

January 1, 1996. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1996.

10.2(16) *Calendar year 1997.* The interest rate upon all unpaid taxes which are due as of January 1, 1997, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1997. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1997. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1997.

10.2(17) *Calendar year 1998.* The interest rate upon all unpaid taxes which are due as of January 1, 1998, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1998. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1998. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1998.

10.2(18) *Calendar year 1999.* The interest rate upon all unpaid taxes which are due as of January 1, 1999, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1999. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1999. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1999.

10.2(19) *Calendar year 2000.* The interest rate upon all unpaid taxes which are due as of January 1, 2000, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2000. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2000. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2000.

10.2(20) *Calendar year 2001.* The interest rate upon all unpaid taxes which are due as of January 1, 2001, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2001. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2001. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2001.

10.2(21) *Calendar year 2002.* The interest rate upon all unpaid taxes which are due as of January 1, 2002, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2002. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2002. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2002.

10.2(22) *Calendar year 2003.* The interest rate upon all unpaid taxes which are due as of January 1, 2003, will be 7 percent per annum (0.6% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2003. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2003. This interest rate of 7 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2003.

10.2(23) *Calendar year 2004.* The interest rate upon all unpaid taxes which are due as of January 1, 2004, will be 6 percent per annum (0.5% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2004. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2004. This interest rate of 6 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2004.

10.2(24) *Calendar year 2005.* The interest rate upon all unpaid taxes which are due as of January 1, 2005, will be 6 percent per annum (0.5% per month). This interest rate will accrue on taxes which are

due and unpaid as of, or after, January 1, 2005. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2005. This interest rate of 6 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2005.

10.2(25) *Calendar year 2006.* The interest rate upon all unpaid taxes which are due as of January 1, 2006, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2006. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2006. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2006.

10.2(26) *Calendar year 2007.* The interest rate upon all unpaid taxes which are due as of January 1, 2007, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2007. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2007. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2007.

10.2(27) *Calendar year 2008.* The interest rate upon all unpaid taxes which are due as of January 1, 2008, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2008. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2008. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2008.

10.2(28) *Calendar year 2009.* The interest rate upon all unpaid taxes which are due as of January 1, 2009, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2009. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2009. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2009.

10.2(29) *Calendar year 2010.* The interest rate upon all unpaid taxes which are due as of January 1, 2010, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2010. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2010. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2010.

10.2(30) *Calendar year 2011.* The interest rate upon all unpaid taxes which are due as of January 1, 2011, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2011. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2011. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2011.

10.2(31) *Calendar year 2012.* The interest rate upon all unpaid taxes which are due as of January 1, 2012, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2012. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2012. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2012.

10.2(32) *Calendar year 2013.* The interest rate upon all unpaid taxes which are due as of January 1, 2013, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2013. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2013. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2013.

10.2(33) *Calendar year 2014.* The interest rate upon all unpaid taxes which are due as of January 1, 2014, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2014. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2014. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2014.

10.2(34) *Calendar year 2015.* The interest rate upon all unpaid taxes which are due as of January 1, 2015, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2015. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2015. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2015.

This rule is intended to implement Iowa Code section 421.7.

[**ARC 8551B**, IAB 2/24/10, effective 3/31/10; **ARC 9308B**, IAB 12/29/10, effective 2/2/11; **ARC 9966B**, IAB 1/11/12, effective 2/15/12; **ARC 0557C**, IAB 1/9/13, effective 2/13/13; **ARC 1250C**, IAB 12/25/13, effective 1/29/14; **ARC 1767C**, IAB 12/10/14, effective 1/14/15]

701—10.3(421,422,423,450,452A) Interest on refunds and unpaid tax.

10.3(1) *Interest on refunds.* For those taxes on which interest accrues on refunds under Iowa Code sections 422.25(3), 422.28, 450.94, and 452A.65, interest shall accrue through the month in which the refund is mailed to the taxpayer and no further interest will accrue unless the department did not use the most current address as shown on the latest return or refund claim filed with the department.

10.3(2) *Interest on unpaid tax.* Interest due on unpaid tax is not a penalty, but rather it is compensation to the government for the period the government was deprived of the use of money. Interest due cannot be waived except in accordance with the settlement authority described in Iowa Code sections 421.5 and 17A.10.

This rule is intended to implement Iowa Code sections 421.5, 422.25(3), 422.28, 423.47, 450.94 and 452A.65.

[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; **ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—10.4(421) Frivolous return penalty. A $500 civil penalty is imposed on the return of a taxpayer that is considered to be a "frivolous return." A "frivolous return" is: (1) A return which lacks sufficient information from which the substantial correctness of the amount of tax liability can be determined or contains information that on its face indicates that the amount of tax shown is substantially incorrect, or (2) a return which reflects a position of law which is frivolous or is intended to delay or impede the administration of the tax laws of this state.

If the frivolous return penalty is applicable, the penalty will be imposed in addition to any other penalty which has been assessed. If the frivolous return penalty is relevant, the penalty may be imposed even under circumstances when it is determined that there is no tax liability on the return.

The frivolous return penalty is virtually identical to the penalty for frivolous income tax returns which is authorized in Section 6702 of the Internal Revenue Code. The department will follow federal guidelines and court cases when determining whether or not the frivolous return penalty should be imposed.

The frivolous return penalty may be imposed on all returns filed with the department and not just individual income tax returns. The penalty may be imposed on an amended return as well as an original return. The penalty may be imposed on each return filed with the department.

10.4(1) *Nonexclusive examples of circumstances under which the frivolous return penalty may be imposed.* The following are examples of returns filed in circumstances under which the frivolous return penalty may be imposed:

a. A return claiming a deduction against income or a credit against tax liability which is clearly not allowed such as a "war," "religious," "conscientious objector" deduction or tax credit.

b. A blank or partially completed return that was prepared on the theory that filing a complete return and providing required financial data would violate the Fifth Amendment privilege against self-incrimination or other rights guaranteed by the Constitution.

c. An unsigned return where the taxpayer refused to sign because the signature requirement was "incomprehensible or unconstitutional" or the taxpayer was not liable for state tax since the taxpayer had not signed the return.

d. A return which contained personal and financial information on the proper lines but where the words "true, correct and complete" were crossed out above the taxpayer's signature and where the taxpayer claimed the taxpayer's income was not legal tender and was exempt from tax.

e. A return where the taxpayer claimed that income was not "constructively received" and the taxpayer was the nominee-agent for a trust.

f. A return with clearly inconsistent information such as when 99 exemptions were claimed but only several dependents were shown.

g. A document filed for refund of taxes erroneously collected with the contention that the document was not a return and that no wage income was earned. This was inconsistent with attached W-2 Forms reporting wages.

10.4(2) *Nonexclusive examples where the frivolous return penalty is not applicable.* The following examples illustrate situations where the frivolous return penalty would not be applicable:

a. A return which includes a deduction, credit, or other item which may constitute a valid item of dispute between the taxpayer and the department.

b. A return which includes innocent or inadvertent mathematical or clerical errors, such as an error in addition, subtraction, multiplication, or division or the incorrect use of a table provided by the department.

c. A return which includes a statement of protest or objection, provided the return contains all required information.

d. A return which shows the correct amount of tax due, but the tax due is not paid.

This rule is intended to implement Iowa Code section 421.8.

701—10.5(421) Improper receipt of credit, refund, exemption, reimbursement, rebate, or other payment or benefit.

10.5(1) *Erroneous application.* A person who makes an erroneous application for refund, credit, exemption, reimbursement, rebate, or other payment or benefit shall be liable for any overpayment received plus interest at the rate in effect under Iowa Code section 421.7(2).

10.5(2) *Willfully false or frivolous application.* A person who willfully makes a false or frivolous application or willfully submits any false information, document, or document containing false information in support of an application for refund, credit, exemption, reimbursement, rebate, or other payment or benefit with the intent to evade tax or with the intent to receive a refund, credit, exemption, reimbursement, rebate, or other payment or benefit to which the person is not entitled is guilty of a fraudulent practice and is liable for a penalty equal to 75 percent of the refund, credit, exemption, reimbursement, rebate, or other payment or benefit claimed. This penalty is not subject to waiver.

This rule is intended to implement Iowa Code section 421.27 as amended by 2021 Iowa Acts, Senate File 608.

[**ARC 9103B**, IAB 9/22/10, effective 10/27/10; **ARC 5916C**, IAB 9/22/21, effective 10/27/21]

701—10.6(421) Penalties.

10.6(1) *Penalties applicable to all taxpayers.* A penalty shall be assessed upon tax due under the circumstances described in this subrule. The rates for penalties described in this rule are uniform for all tax types. Unless otherwise specified in this subrule, see rule 701—10.7(421) for waivers that may apply to these penalties.

a. For failure to timely file a return, there is a 5 percent penalty on the unpaid tax. This penalty, once imposed, will be assessed on all subsequent amounts found by the taxpayer or the department to be due for the tax period. This penalty is in addition to any other penalty provided by law.

b. For failure to timely pay the tax due on a return , there is a 5 percent penalty on the unpaid tax. This penalty is in addition to any other penalty provided by law.

c. For a deficiency of tax due found during an audit or examination, there is a 5 percent penalty on the unpaid tax. This penalty is in lieu of the penalty for failure to timely pay but is in addition to any other penalty provided by law.

d. For willful failure to file a return with the intent to evade tax or a filing requirement, or in the case of willfully filing a false return with the intent to evade tax, there is a 75 percent penalty. This penalty is in lieu of other penalties applicable under this rule. This penalty is not subject to waiver.

e. For failure to remit at least 90 percent of the tax due by the time an extension for further time to file a return is made, there is a 10 percent penalty on the unpaid tax.

f. For failure to remit payment of taxes in the form or manner required by the rules of the director, there is a 5 percent penalty on the amount of the payment remitted in the incorrect form or manner, not to exceed $500 per instance. This penalty shall be waived if the taxpayer was not notified of the requirement to remit tax payments electronically or if the incorrect electronic transmission of the payment was made before the taxpayer was notified of the requirement to remit tax payments electronically.

10.6(2) *Penalties applicable to specified businesses for tax years beginning on or after January 1, 2022, in which no tax is due.*

a. Definitions. For purposes of this subrule, the following definitions apply:

"Imputed Iowa liability" means the specified business's Iowa net income after the application of the Iowa business activity ratio, if applicable, multiplied by the applicable tax rate for the tax year, less any Iowa tax credits available to be claimed by the specified business in the current year. The applicable tax rate is:

1. In the case of an entity taxed as a C corporation, the top corporation income tax rate under Iowa Code section 422.33,
2. In the case of a financial institution as defined in Iowa Code section 422.61, the franchise tax rate under Iowa Code section 422.63, or
3. In the case of an entity taxed as an S corporation or partnership, the top individual income tax rate under Iowa Code section 422.5A.

"Income return" includes an Iowa corporation income tax return (IA 1120), an Iowa franchise tax return (IA 1120F), an Iowa S corporation income tax return (IA 1120S), and an Iowa partnership income tax return (IA 1065).

"Specified business" means any of the following:

1. An entity taxed as a C corporation that is required to file an Iowa corporation income tax return (IA 1120). This includes a consolidated group of corporations electing or required to file an Iowa consolidated return under Iowa Code section 422.37.
2. An entity taxed as an S corporation that is required to file an Iowa S corporation income tax return (IA 1120S).
3. A financial institution that is required to file an Iowa franchise tax return (IA 1120F).
4. An entity taxed as a partnership that is required to file an Iowa partnership income tax return (IA 1065).

b. For a failure by a specified business to timely file an income return when no tax is due, a penalty shall be assessed equal to the greater of $200 or 5 percent of the imputed Iowa liability of the specified business, not to exceed $25,000. A specified business that has Iowa tax due for a tax year (such as an S corporation subject to Iowa income tax on built-in gains or passive investment income) is not subject to this penalty for that tax year but may be subject to other penalties provided in this rule.

c. For willful failure by a specified business to file an income return with no tax shown due with the intent to evade a filing requirement, or in the case of willfully filing a false income return with no tax shown due with the intent to evade reporting of Iowa-source income, a penalty shall be assessed equal to the greater of $1,500 or 75 percent of the imputed Iowa liability of the specified business. This penalty is not subject to waiver. A specified business that has Iowa tax due for a tax year (such as an S corporation

subject to Iowa income tax on built-in gains or passive investment income) is not subject to this penalty for that tax year but may be subject to other penalties provided in this rule.

10.6(3) *Examples.* The following are examples to illustrate the computation of penalties imposed under this rule. For purposes of these examples, interest has been computed at the rate of 12 percent per year or 1 percent per month. The tax due amounts are assumed to be the total amounts due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax due was paid.

Example (a) — Failure to Timely File and Failure to Timely Pay

a. Tax due is $100.
b. Return filed 2 months and 10 days after the due date.
c. $0 paid prior to filing.

The calculation for the total amount due 3 months after the due date is shown below:

Tax	$100	
Penalty	10	(5% for failure to timely file, 5% for failure to timely pay)
Interest	3	(3 months interest)
Total amount due	$113	

Example (b) — Failure to Timely Pay

a. Tax due is $100.
b. Return is timely filed.
c. $0 paid with the return.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	$100	
Penalty	5	(5% for failure to timely pay)
Interest	5	(5 months interest)
Total amount due	$110	

Example (c) — Audit Deficiency on Timely Filed Return

a. Timely filed return reported $100 tax due.
b. $100 paid with return.
c. Audit completed 8 months after the due date of the return.
d. $100 in additional tax found due during audit.

The calculation for the total amount due is shown below:

Computed tax after audit	$200	
Less tax paid with return	100	
Additional tax due	$100	
Penalty	5	(5% for audit deficiency)
Interest	8	(8 months interest)
Total amount due	$113	

Example (d) — Audit Deficiency on Late Return Granted an Exception From Failure to File

a. Tax due reported on return is $100.
b. Return filed 3 months and 10 days after the due date.
c. $100 paid with the return.
d. Taxpayer is granted an exception from penalty for failure to timely file and failure to timely pay.
e. Audit completed 8 months after the due date of the return.
f. $100 additional tax found due during audit.

The computation for the total amount due is shown below:

Tax due after audit	$200	
Less tax paid with return	100	
Additional tax due	$100	
Penalty	5	(5% for audit deficiency. No penalty for failure to file.)
Interest	8	(8 months interest)
Total amount due	$113	

Example (e) — Audit Deficiency on Late Filed Return No Pay Return

a. Tax due reported on the return is $100.
b. Return filed 3 months and 10 days after the due date.
c. $114 in tax, penalty, and interest paid with the return.
d. Audit completed 8 months after the due date.
e. $100 additional tax found due during audit.

The computation for the total amount due is shown below:

Tax due reported on original return	$100	
Penalty	10	(5% for failure to timely file, 5% for failure to timely pay)
Interest	4	(4 months interest)
Total amount due on original return	$114	
Additional tax due after audit	$100	
Penalty	10	(5% for failure to file, 5% for audit deficiency)
Interest	8	(8 months interest)
Amount due after audit	$118	
Total amount due for tax period	$232	

Example (f) — Failure to Timely File by a Specified Business

a. Tax due for tax year 2023 is $0 because the entity is a partnership (IA 1065).
b. Return is filed 7 months and 10 days after the due date.
c. Partnership net income after calculation of the Iowa business activity ratio is $30,000.
d. Net income multiplied by the top individual tax rate in 2023 of 6.5 percent is $1,950.
e. Iowa tax credits available are $1,000.
f. Imputed Iowa liability is $950.
g. The penalty is the greater of 5 percent of the imputed Iowa liability ($48) or $200.

The calculation for the total amount due is shown below:

Tax	$0
Penalty	200
Interest	0
Total amount due	$200

[**ARC 5916C**, IAB 9/22/21, effective 10/27/21]

701—10.7(421) Waiver of penalty. Under certain circumstances, the penalty for failure to timely file a return, failure to timely pay the tax due with the filing of a return, or failure to pay following an audit

by the department is waived. The taxpayer has the burden to prove the necessary conditions to waive a penalty.

10.7(1) Definitions. For purposes of this rule, the following definitions apply:

"Act of God" means an unusual and extraordinary manifestation of nature which could not reasonably be anticipated or foreseen and cannot be prevented by human care, skill, or foresight.

"Immediate family" includes the spouse, children, or parents of the taxpayer. There is a rebuttable presumption that relatives of the taxpayer beyond the relation of spouse, children, or parents of the taxpayer are not within the taxpayer's immediate family for purposes of the waiver exceptions.

"Sanctioned self-audit program" means an audit performed by the taxpayer with forms provided by the department as a result of contact by the department to the taxpayer prior to voluntary filing or payment of the tax. Filing voluntarily without contact by the department does not constitute a sanctioned self-audit.

"Substantial authority" means the weight of authorities for the tax treatment of an item is substantial in relation to the weight of authorities supporting contrary positions.

In determining whether there is substantial authority, only the following will be considered authority: applicable provisions of Iowa statutes; the Internal Revenue Code; Iowa administrative rules construing those statutes; court cases; administrative rulings; legal periodicals; department newsletters and tax return instruction booklets; tax treaties and regulations; and legislative intent as reflected in committee reports.

Conclusions reached in treaties, legal opinions rendered by other tax professionals, descriptions of statutes prepared by legislative staff, legal counsel memoranda, and proposed rules and regulations are not authority.

There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is due to be filed or there was substantial authority on the last day of the taxable year to which the return relates.

The taxpayer must notify the department at the time the return or payment is originally due of the substantial authority the taxpayer is relying upon for not filing the return or paying the tax due.

10.7(2) Documentation. Unless otherwise indicated, written documentation is required to support the waiver of a penalty.

10.7(3) For failure to timely file a return or failure to timely pay tax due, the 5 percent penalties shall be waived upon a showing of the following exceptions.

a. An amount of tax greater than $0 is due and at least 90 percent of the tax required to be shown due has been paid by the due date of the tax return. This exception does not apply to the penalty for failure to timely file by a specified business under subrule 10.6(2).

b. A taxpayer required to file a monthly or quarterly return is allowed one late return or one late payment within a three-year period.

(1) The use by the taxpayer of any other penalty exception under this subrule will not count as a late return or payment for purposes of this subrule.

(2) If the taxpayer receives this waiver, the taxpayer must make timely filings and payments for three years prior to being eligible for another waiver under this paragraph.

(3) This exception does not apply to an income return, a franchise return, or a moneys and credits return.

(4) This exception will automatically be applied to a return or payment by the department if the taxpayer is eligible for the exception.

(5) This exception is determined on the basis of the tax period for which the return or payment is due and not the date on which the return is filed or payment is made.

EXAMPLE: Taxpayer A, a retail business with multiple employees, has not been late in filing returns or making payments for five years. Taxpayer A files its withholding return for the fourth quarter of 2020, due January 20, 2021, on the due date but does not make the payment until the next day. Taxpayer A incurs the penalty for failing to timely pay, but the penalty will be waived under this exception. Taxpayer A is not eligible for a waiver for a late return filing or late payment again until the due date for the fourth quarter of 2023.

c. Death of a taxpayer, a member of the immediate family of the taxpayer, or the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing of a return or timely payment of tax. The taxpayer will be provided an extension of 30 days from the date the return or payment is originally due without incurring penalty. There is a rebuttable presumption that a death that occurs more than 30 days before the original date the return or payment is due does not interfere with timely filing or payment. The taxpayer, or taxpayer's legal representative, has the burden of supplying proof of when the death occurred.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return and paying the tax when such illness or hospitalization interferes with the timely filing of a return or timely payment of tax.

(1) There is a rebuttable presumption that the onset of an illness or hospitalization that precedes the due date of the return or payment form by more than 30 days does not interfere with the timely filing or timely payment of tax.

(2) The taxpayer will be provided an extension of at least 30 days from the date the return or payment form is originally due or until the illness or hospitalization no longer reasonably interferes with the taxpayer's ability to file the return without incurring penalty.

(3) The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred, when it occurred, and how the illness or hospitalization interfered with the taxpayer's ability to timely file a return or timely pay.

e. Destruction of records by fire, flood, or act of God when the destruction interferes with the timely filing of a return or timely payment of tax. There is a rebuttable presumption that an "act of God" that precedes the due date of the return or payment by 30 days or more did not interfere with the timely filing or payment.

f. The taxpayer presents proof that the taxpayer at the due date of the return or payment relied upon applicable, documented, written advice made specifically to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or Internal Revenue Service. The advice should be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The reliance must be the direct cause of the failure to file or failure to pay, and the advice must be current and not superseded by a court decision, ruling of a quasi-judicial body such as an administrative law judge or the director, or by the adoption, amendment, or repeal of a rule or law.

g. Reliance upon the results of a previous audit was a direct cause for failure to file or pay where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or by adoption, amendment, or repeal of a rule or law.

h. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return. These types of errors will not be considered as penalty exceptions.

i. The return or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

l. The availability of funds in payment of tax required to be made through electronic funds transfer is delayed and the delay of availability is due to reasons beyond the control of the taxpayer.

m. For estates with disclaimers, a penalty will not be imposed for failure to pay or a late-filed Iowa inheritance tax return if the sole reason for the failure to pay or late-filed inheritance tax return is due to a beneficiary's decision to disclaim property or disclaim an interest in property from the estate. However, for the penalty to be waived, the Iowa inheritance tax return must be filed and all tax must be paid to the

department within the later of nine months from the date of death or 60 days from the delivery or filing date of the disclaimer pursuant to Iowa Code section 633E.12.

10.7(4) In addition to any applicable waivers for failure to timely pay the tax due on a return in subrule 10.7(3), the 5 percent penalty for failure to timely pay the tax due shall be waived upon a showing of any of the following exceptions:

a. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

b. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within 60 days of the final disposition of the federal government's audit.

10.7(5) For a deficiency of tax due on a return found during an audit or examination, the 5 percent penalty is waived under the following exceptions:

a. At least 90 percent of the tax due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that the reliance was the direct cause for the failure to pay and the advice has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or the adoption, amendment, or repeal of a rule or law.

d. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return. These types of errors will not be considered as penalty exceptions.

[**ARC 5916C**, IAB 9/22/21, effective 10/27/21]

701—10.8(421) Tax return extension in disaster areas. If a natural disaster is declared by the governor in any area of the state, the director may extend for a period of up to one year the due date for the filing of any tax return and may suspend any associated penalty or interest that would accrue during that period of time for any affected taxpayer whose principal residence or business is located in the covered area, if the director determines it necessary for the efficient administration of the tax laws of this state. The director will notify the public of any possible extensions of tax filings as well as possible suspensions of penalty and interest. Notification will be made through different means available to the director including but not limited to press releases, media information, and the department's website. Persons eligible for extension shall complete any application or form if required by the department and satisfy any requirements or conditions for the extension.

This rule is intended to implement Iowa Code section 421.17(30).

[**ARC 6583C**, IAB 10/5/22, effective 11/9/22]

701—10.9(421) Failure to file penalty. A penalty may be assessed for failure to file a return if a taxpayer is subject to a return filing requirement. This penalty may be assessed on any person required to file a return for any tax type administered by the department. This penalty shall be assessed 90 days after the department has issued a demand letter if a return has not been filed. This penalty will be equal to $1,000 for each failure to file. This penalty is in addition to any other penalty provided by law.

10.9(1) *Demand letter.*

a. The department may send a demand letter to a taxpayer at any time after the taxpayer has failed to file a return, as defined in Iowa Code section 421.6, by the due date. Once this letter has been issued, the taxpayer has 90 days from the date on the letter to file all returns referenced in the letter or show proof that all returns referenced in the letter have already been filed before a penalty will be assessed.

b. The letter shall contain the following title and heading:

FAILURE TO FILE DEMAND LETTER

The Iowa Department of Revenue has determined you have not filed one or more required returns. Under Iowa Code section 421.27(8), failure to file your return(s) as described in this letter within 90 days of the date of this letter will result in a $1,000 penalty for each return that is not filed. Penalties under Iowa Code section 421.27(8) are in addition to other penalties under Iowa law.

c. The letter shall also contain the following:

(1) Date of demand letter.

(2) Tax period(s) involved.

(3) Return(s) to be filed.

(4) Date by which the return(s) must be filed to avoid incurring a penalty under Iowa Code section 421.27(8).

(5) Total penalty under Iowa Code section 421.27(8) that will be assessed if the return(s) are not filed within 90 days.

10.9(2) *Waiver of penalty.*

a. Documentation. Unless otherwise indicated, written documentation from the taxpayer is required to support the waiver of this penalty.

b. Good reason. This penalty can be waived if the taxpayer proves by a preponderance of the evidence that the taxpayer did not file a return within 90 days of the date of the demand letter due to a "good reason" as defined in this rule. "Good reason" can only be shown by proving one of the following circumstances:

(1) Destruction of records by fire, flood, or act of God when the destruction interferes with the filing of a return within 90 days of the date of demand letter. "Act of God" means the same as defined in subrule 10.7(1).

(2) The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return when such illness or hospitalization interferes with the filing of a return within 90 days of the date of the demand letter.

(3) The return is filed but erroneously mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

(4) A timely appeal of a department action, other than the demand letter, contesting the filing requirement of the return(s) stated in the demand letter was filed before the date stated in the letter pursuant to subparagraph 10.9(1)*"c"*(4).

(5) Other good reason within the discretion of the department, if the taxpayer has mutually agreed, in writing, with the department to file the required return(s) within a reasonable period of time beyond the date stated in the letter pursuant to subparagraph 10.9(1)*"c"*(4).

c. Subsequent issuance. The department may issue a new demand letter for the same filing obligation if the taxpayer continues to fail to file after the waiver is granted.

EXAMPLE 1: X fails to file a return. The department sends X a failure to file demand letter pursuant to subrule 10.9(1). X fails to file the return within 90 days of the date of the demand letter. X is assessed a $1,000 penalty. X is still required to file the return.

EXAMPLE 2: Y fails to file a return. The department sends Y a failure to file demand letter under subrule 10.9(1). Y fails to file the return within 90 days of the date of the demand letter. Y is assessed a $1,000 penalty. Y demonstrates to the department that Y was in the hospital and that the hospitalization interfered with Y's filing of the return within 90 days of the demand letter. The department waives the $1,000 penalty. Y is still required to file the return.

EXAMPLE 3: Same facts as Example 2. After receiving the good reason waiver, Y does not file the return. The department issues a new failure to file demand letter under subrule 10.9(1) for the same return that the department sought to be filed in Example 2. Y fails to file the return within 90 days of the date of the second demand letter. Y is assessed a $1,000 penalty. Y is no longer hospitalized and has no other good reason pursuant to paragraph 10.9(2)*"b."* The $1,000 penalty is not waived. A good reason

waiver for the first demand letter does not permanently relieve Y from filing the return. Granting the waiver for a good reason for the first demand letter does not prevent the department from issuing a new demand letter for the same filing obligation.

10.9(3) *Rescission.* The department may rescind the demand letter in writing any time before the penalty is assessed under Iowa Code section 421.27(8) if the taxpayer demonstrates to the department's satisfaction that the taxpayer has no Iowa return filing requirement or that the filing requirement has been met. The taxpayer shall have the burden to prove by a preponderance of the evidence that no filing obligation exists. The department may also rescind the demand letter if the taxpayer proves a good reason exists as described in paragraph 10.9(2)*"b"* that prevents the taxpayer from filing the return and the taxpayer has mutually agreed, in writing, with the department to file the required return within a reasonable period of time. The department may issue a new demand letter for the same filing obligation if the taxpayer continues to fail to file after the reasonable period of time mutually agreed to by the taxpayer and the department due to proof of a good reason has expired or if, after the department previously determined the taxpayer had no filing requirement, the department obtains additional information that shows the taxpayer does have a filing requirement.

EXAMPLE 4: Z fails to file a return and receives a demand letter. Z presents proof to the department that Z has no filing requirement. In response to this information, the department rescinds the demand letter. Z does not need to file the return within 90 days, and the department does not impose a $1,000 penalty on Z.

EXAMPLE 5: Same facts as Example 4. After the department rescinds the demand letter, the department receives new information showing Z is required to file a return. The department can send Z a new demand letter for the same return.

This rule is intended to implement Iowa Code section 421.27 as amended by 2021 Iowa Acts, Senate File 608, section 2.

[**ARC 6566C**, IAB 10/5/22, effective 11/9/22]

701—10.10 to **10.19** Reserved.

RETAIL SALES

[Prior to 1/23/91, see 701—12.10(422,423) and 12.11(422, 423)]

701—10.20 to **10.29** Reserved.

USE

[Prior to 1/23/91, see 701—30.10(423)]

701—10.30 to **10.39** Reserved.

INDIVIDUAL INCOME

[Prior to 1/23/91, see 44.1(422), 44.3(422), 44.7(422) and 44.8(422)]

701—10.40 to **10.49** Reserved.

WITHHOLDING

[Prior to 1/23/91, see 701—46.5(422)]

701—10.50 to **10.55** Reserved.

CORPORATE

[Prior to 1/23/91, see subrule 701—52.5(3) and rule 701—52.10(422)]

701—10.56 to **10.65** Reserved.

FINANCIAL INSTITUTIONS

[Prior to 1/23/91, see 701—58.6(422)]

701—10.66 to **10.70** Reserved.

MOTOR FUEL
[Prior to 1/23/91, see 701—63.8(324) and 63.10(324)]

701—10.71(452A) Penalty and enforcement provisions.

10.71(1) *Illegal use of dyed fuel.*

a. The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

(1) A $500 penalty for the first violation.

(2) A $1,000 penalty for a second violation within three years of the first violation.

(3) A $2,000 penalty for third and subsequent violations within three years of the first violation.

b. For the purposes of this subrule, if multiple vehicles are discovered to be in violation of this subrule during one inspection, each vehicle is considered a separate first violation. For example, if three vehicles are discovered to be in violation during one inspection, the result is three $500 penalties or $1,500. On the other hand, if three vehicles owned by the same taxpayer are discovered to be in violation during three separate inspections, the first inspection would result in a $500 penalty, the second inspection would result in a $1,000 penalty, and the third inspection would result in a $2,000 penalty. If one vehicle is discovered to be in violation during the first inspection, resulting in a $500 penalty, but two vehicles are discovered to be in violation in a second inspection, the result of the second inspection would be two $1,000 penalties, or $2,000 total.

10.71(2) *Illegal importation of untaxed fuel.* A person who illegally imports motor fuel or undyed special fuel without a valid importer's license or supplier's license shall be assessed a civil penalty as stated below. However, the owner or operator of the importing vehicle shall not be guilty of violating the illegal import provision if it is shown by the owner or operator that the owner or operator reasonably did not know or reasonably should not have known of the illegal importation.

a. For a first violation, the importing vehicle shall be detained and a penalty of $4,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the penalty.

b. For a second violation, the importing vehicle shall be detained and a penalty of $10,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the penalty.

c. For third and subsequent violations, the importing vehicle and the fuel shall be seized and a penalty of $20,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the penalty.

d. If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and penalty for a first or second offense, the importing vehicle and the fuel may be seized. The Iowa department of revenue, the Iowa department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

e. If the operator or owner of the importing vehicle or the owner of the fuel moves the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that "this vehicle cannot be moved until the tax, penalty, and interest have been paid to the department of revenue," an additional penalty of $10,000 shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

10.71(3) *Improper receipt of fuel credit or refund.* If a person files an incorrect refund claim, in addition to the amount of the excess claim, a penalty of 10 percent shall be added to the amount by which the amount claimed and refunded exceeds the amount actually due and shall be paid to the department. If a person knowingly files a fraudulent refund claim with the intent to evade the tax, the penalty shall be 75 percent in lieu of the 10 percent. The person shall also pay interest on the excess refunded at the rate per month specified in Iowa Code section 421.7, counting each fraction of a month as an entire month, computed from the date the refund was issued to the date the excess refund is repaid to the state.

10.71(4) *Illegal heating of fuel.* The deliberate heating of taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

10.71(5) *Prevention of inspection.* The Iowa department of revenue or the Iowa department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where taxable fuel is or may be loaded into transport vehicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel or shipping papers by authorized personnel shall be subject to a civil penalty of not more than $2,000 per occurrence. Any law enforcement officer requested by the Iowa department of revenue or Iowa department of transportation may physically inspect, examine, or otherwise search any tank, fuel supply tank of a vehicle, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

10.71(6) *Failure to conspicuously label a fuel pump.* A retailer who does not conspicuously label a pump or other delivery facility as required by the Internal Revenue Service, that dispenses dyed diesel fuel so as to notify customers that it contains dyed fuel, shall pay to the department of revenue a penalty of $100 per occurrence.

10.71(7) *False or fraudulent return.* Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign, or verify any report or return required by this chapter and who makes a false or fraudulent report, or who fails to file a report or return with the intent to evade the tax, shall be guilty of a fraudulent practice. Any person who aids, abets, or assists another person in making any false or fraudulent return or false statement in any return with the intent to evade payment of tax shall be guilty of a fraudulent practice.

10.71(8) *Violation of a distributor's and dealer's right to blend conventional blendstock for oxygenate blending, gasoline, or diesel fuel and biofuel.* A refiner, supplier, terminal operator, or terminal owner, as defined in Iowa Code section 452A.2, who violates a distributor's or dealer's right to blend conventional blendstock for oxygenate blending, gasoline, or diesel fuel and biofuel, as described in Iowa Code section 452A.6A, is subject to a civil penalty.

a. Suspected violations should be reported to the motor fuel examination section of the department. Supporting documentation should be provided.

b. The department will investigate to determine whether a violation has occurred.

c. If the department determines that a violation has occurred, a civil penalty of $10,000 per violation will be assessed against the violator. Each day that a violation continues is a separate violation.

For more information on the blending rights of distributors and dealers, see 701—260.19(452A).

This rule is intended to implement Iowa Code sections 452A.2, 452A.6A and 452A.74A.

[**ARC 8225B**, IAB 10/7/09, effective 11/11/09; **ARC 1442C**, IAB 4/30/14, effective 6/4/14; Editorial change: IAC Supplement 10/18/23]

701—10.72(452A) Interest. Interest, based on the tax due, shall be assessed against the taxpayer for each month such tax remains unpaid. The interest shall accrue from the date the return was required to be filed. Each fraction of a month shall be considered a full month for the computation of interest. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

Refunds on reports or returns filed on or after July 1, 1997, will accrue interest beginning on the first day of the second calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later, at the rate in effect under Iowa Code section 421.7, counting each fraction of a month as an entire month. Claims for refund filed under Iowa Code sections 452A.17 and 452A.21 will accrue interest beginning with the first day of the second calendar month following the date the refund claim is received by the department. See rule 701—10.3(422,450,452A).

This rule is intended to implement Iowa Code section 452A.65.

[**ARC 1303C**, IAB 2/5/14, effective 3/12/14]

701—10.73 to **10.75** Reserved.

CIGARETTES AND TOBACCO

[Prior to 1/23/91, see 701—81.8(98), 81.9(98), and 81.15(98)]

701—10.76(453A) Penalties.

10.76(1) *Cigarettes.* The following is a list of offenses which subject the violator to a penalty:

a. The failure of a permit holder to maintain proper records;

b. The sale of taxable cigarettes without a permit;

c. The filing of a late, false or incomplete report with the intent to evade tax by a cigarette distributor, distributing agent or wholesaler;

d. Acting as a distributing agent without a valid permit; and

e. A violation of any provision of Iowa Code chapter 453A or these rules.

Penalties for these offenses are as follows:

(1) A $200 penalty for the first violation.

(2) A $500 penalty for a second violation within three years of the first violation.

(3) A $1,000 penalty for a third or subsequent violation within three years of the first violation.

Penalties for possession of unstamped cigarettes are as follows:

(4) A $200 penalty for the first violation if a person is in possession of more than 40 but not more than 400 unstamped cigarettes.

(5) A $500 penalty for the first violation if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes.

(6) A $1,000 penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A $25 per pack penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

(7) For a second violation within three years of the first violation, the penalty is $400 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; $1,000 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and $2,000 if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A $35 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

(8) For a third or subsequent violation within three years of the first violation, the penalty is $600 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; $1,500 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and $3,000 if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A $45 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax. If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 5 percent of the tax deficiency shall be imposed. This penalty is not subject to waiver for reasonable cause.

See rule 701—10.7(421) for statutory exceptions to penalty.

10.76(2) *Tobacco.*

See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax.

See rule 701—10.7(421) for statutory exceptions to penalty.

This rule is intended to implement Iowa Code sections 453A.28, 453A.31 and 453A.46.

[**ARC 5916C**, IAB 9/22/21, effective 10/27/21]

701—10.77(453A) Interest.

10.77(1) *Cigarettes.* There shall be assessed interest at the rate established by rule 701—10.2(421) from the due date of the tax to the date of payment counting each fraction of a month as an entire month. For the purpose of computing the due date of any unpaid tax, a FIFO inventory method shall be used for cigarettes and stamps. See rule 701—10.6(421) for examples of penalty and interest.

10.77(2) *Tobacco.* The interest rate on delinquent tobacco tax is the rate established by rule 701—10.2(421) counting each fraction of a month as an entire month. If an assessment for taxes due is not allocated to any given month, the interest shall accrue from the date of assessment. See rule 701—10.6(421) for examples of penalty and interest.

This rule is intended to implement Iowa Code sections 453A.28 and 453A.46.

701—10.78 Reserved.

701—10.79(453A) Request for statutory exception to penalty. Any taxpayer who believes there is a good reason to object to any penalty imposed by the department for failure to timely file returns or pay the tax may submit a request for exception seeking that the penalty be waived. The request must be in the form of a letter or affidavit and must contain all facts alleged by the taxpayer and a reason for why the taxpayer qualifies for the exceptions. See rule 701—10.7(421).

This rule is intended to implement Iowa Code sections 453A.31 and 453A.46.

[**ARC 5916C**, IAB 9/22/21, effective 10/27/21]

701—10.80 to **10.84** Reserved.

INHERITANCE

[Prior to 1/23/91, see 701—subrules 86.2(14) to 86.2(20)]

701—10.85 to **10.89** Reserved.

IOWA ESTATE

[Prior to 1/23/91, see 701—subrules 87.3(9) to 87.3(12)]

701—10.90 to **10.95** Reserved.

GENERATION SKIPPING

[Prior to 1/23/91, see 701—subrules 88.3(14) and 88.3(15)]

701—10.96 to **10.100** Reserved.

FIDUCIARY INCOME

[Prior to 1/23/91, see 701—89.6(422) and 89.7(422)]

701—10.101 to **10.109** Reserved.

HOTEL AND MOTEL

[Prior to 1/23/91, see 701—104.8(422A) and 104.9(422A)]

701—10.110 to **10.114** Reserved.

ALL TAXES

701—10.115(421) Application of payments to penalty, interest, and then tax due for payments made on or after January 1, 1995, unless otherwise designated by the taxpayer. The department will not reapply prior payments made by the taxpayer to penalty or interest determined to be due after the date of those prior payments. However, the department will apply payments to penalty and interest which were due at the time the payment was made.

Example (a) — Delinquent Return

a. Tax due is $1,000.
b. Return filed two months late.
c. $1,000 paid with the return.

d. The department bills the additional tax in the third month after the due date. The taxpayer pays the assessment in the third month.

The computation of additional tax is shown below:

Tax	$1,000.00	
Penalty	100.00	(10% failure to file penalty)
Interest	14.00	(2 months interest)
Total	$1,114.00	
Less payment	1,000.00	
Additional tax due	$ 114.00	
Interest	.80	(1 month interest)
Total due	$ 114.80	

Two years after the due date, the Internal Revenue Service conducts an audit and increases the taxpayer's taxable income. The department redetermines the taxpayer's liability 26 months after the due date as follows:

Tax as redetermined by the department	$1,100.00	
Less paid with return	1,000.00	
Additional tax	$ 100.00	
Penalty	10.00	(10% failure to file penalty)
Interest	18.20	(26 months interest)
Total due	$ 128.20	

Example (b) — Timely Filed No Remit

a. Tax due is $1,000.

b. Return timely filed.

c. $0 paid.

The calculation for the total amount due five months after the due date is shown below:

Tax	$1,000.00	
Penalty	50.00	(5% failure to pay penalty)
Interest	35.00	(5 months interest)
Total due	$1,085.00	

The department bills the additional tax in the fifth month after the due date and the taxpayer pays the additional amount in the eighth month after the due date. The payment is applied as follows:

Tax	$1,000.00	
Penalty	50.00	(5% failure to pay penalty)
Interest	56.00	(8 months interest)
Total due	$1,106.00	
Amount paid	$1,085.00	

Balance tax due $21.00 subject to interest until paid.

The balance due was not paid.

Three years after the due date the taxpayer forwards a copy of an Internal Revenue Service audit which increases the taxpayer's income to the department. The department recomputes the taxpayer's liability as follows:

Tax as redetermined by the department	$1,200.00	
Less paid per prior audit	979.00	
Balance due	$ 221.00	(includes the balance due of $21)
Penalty	10.00	(5% failure to pay penalty on $200, the $21.00 already bears penalty)
Interest	54.52	(36 months interest on $200 and 28 months interest on $21)
Total due	$ 285.52	

10.115(1) *Refunds.* In those instances where an audit reduced the amount of tax, penalty, and interest due over the amount paid, the department will reapply payments so that amount refunded is tax on which interest will accrue as set forth in the Iowa Code.

10.115(2) *Partial payments made after notices of assessments are issued.* Where partial payments are made after a notice of assessment is issued, the department will reapply payments to penalty, interest, and then to tax due until the entire assessed amount is paid. See *Ashland Oil Inc. v. Iowa Department of Revenue and Finance,* 452 N.W.2d 162 (Iowa 1990). If penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the penalty, then the interest, then the tax for the oldest tax period, then to the penalty, interest, and tax to the next oldest tax period, and so on until the payment is exhausted.

Where there are both agreed- and unagreed-to items as a result of an examination, the taxpayer and the department may agree to apply payments to the penalty, interest, and then to tax due on the agreed-to items of the examination when all of the penalty, interest, and tax on the agreed-to items are paid. In these instances, subsequent payments will not be applied to penalty and interest accrued on the agreed-to items of the examination.

This rule is intended to implement Iowa Code section 422.25(4).

[**ARC 7761B**, IAB 5/6/09, effective 6/10/09]

JEOPARDY ASSESSMENTS

701—10.116(422,453B) Jeopardy assessments. A jeopardy assessment may be made where a return has been filed and the director believes for any reason that assessment or collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. In addition, all assessments made pursuant to Iowa Code chapter 453B are jeopardy assessments. The department is authorized to estimate the applicable tax base and the tax upon the basis of available information, add penalty and interest, and demand immediate payment.

A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—10.117(422,453B) Procedure for posting bond. In the event a taxpayer seeks to post a bond in lieu of summary collection of a jeopardy assessment, pending final determination of the amount of tax legally due, an original and four copies of a separate written bond application conspicuously titled "Jeopardy Assessment Bond Request" must be filed with the clerk of the hearings section for the department. Thereafter, if the taxpayer and the department agree on an appropriate bond, the clerk of the hearings section for the department shall be notified and the bond shall be approved by the clerk of the hearings section for the department.

If the clerk of the hearings section for the department has not been notified that an agreement on the bond has been reached within ten days after the date upon which the bond request was filed, the clerk of the hearings section for the department shall transfer the file to the director who shall promptly schedule

a hearing on the bond request with written notice to be given the taxpayer and the department at least ten days prior to the hearing.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.118(422,453B) Time limits. Bond requests may be made anytime after a timely protest to the jeopardy assessment has been filed with the clerk of the hearings section for the department, except that any bond request whereby the taxpayer seeks to postpone a scheduled sale of assets seized by or on behalf of the department must be filed with the clerk of the hearings section for the department no later than ten days from the date on which notice of the sale was mailed to, or otherwise served upon, the taxpayer. Portions of an assessment which are undisputed must be paid in full at the time a bond request is filed.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.119(422,453B) Amount of bond. In the event no agreement on the bond is reached, bonds must be posted in an amount to be determined by the director consistent with the following:

10.119(1) If property has been seized or a lien has been filed and the taxpayer seeks only to postpone the sale of property, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the expected depreciation loss, storage cost, insurance costs and any and all other costs associated with the distraint and storage of the property pending such final determination.

10.119(2) If property has been seized or a lien has been filed and the taxpayer seeks to prevent the sale of property and to have the property returned for the taxpayer's own use, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the sale price the department can reasonably expect to realize on any property seized plus all costs related to the distraint and storage of the property.

10.119(3) If a taxpayer seeks to prevent the department from seizing property or placing a lien upon property, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the total amount of the department's assessment including interest to the date of the bond.

Bonds may not be required in excess of double the amount of the department's jeopardy assessment.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.120(422,453B) Posting of bond. If the taxpayer fails to post the bond as agreed upon within 15 days from the date the bond is approved by the clerk of the hearings section for the department, no bond will be allowed and the director shall dismiss the bond request. If no agreement was reached and a bond order is issued by the director, the taxpayer has ten days to post the bond. If the bond is not posted within the ten-day period, the director shall dismiss the bond request.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.121(422,453B) Order. The director's order shall be in writing and shall include findings of fact based solely on the evidence in the record and on matters officially noticed in the record and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. Findings of fact shall be prefaced by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service or by ordinary mail.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.122(422,453B) Director's order. The director's order constitutes the final order of the department for purposes of judicial review. Parties shall be promptly notified of the director's order by delivery to them of a copy of the order by personal service or by ordinary mail.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.123(422,453B) Type of bond. The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings up to the amount of the bond. Upon application of the taxpayer or the department, the director may, upon hearing, fix a greater or lesser amount to reflect changed circumstances, but only after ten days' prior notice is given to the department or the taxpayer as the case may be.

A personal bond, without a surety, is only permitted if the taxpayer posts with the clerk of the hearings section for the department, cash, a cashier's check, a certificate of deposit, or other marketable securities which are approved by the director with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of Iowa Code chapter 636 relating to personal and corporate sureties shall govern to the extent not inconsistent with the provisions of this subrule.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.124(422,453B) Form of surety bond. The surety bond posted shall be in substantially the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	
	*	
(Taxpayer's Name, Address and	*	SURETY BOND
designate proceeding, e.g.,	*	
income, sales, etc.)	*	DOCKET NO.
	*	

KNOW ALL PERSONS BY THESE PRESENTS:

That we _____(taxpayer)_____ as principal, and _____(surety)_____, as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue for the use of the State of Iowa, in the sum of $ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above-named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated this _____ day of _____, _____.

_____
Principal

Surety

Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA)
ss
COUNTY OF)

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts," and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution."

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____	$ _____	$ _____
Surety (type name)		
_____	$ _____	$ _____
Surety (type name)		

Subscribed and sworn to before me the undersigned Notary Public this _____ day of _____, _____.

(Seal)

Notary Public in and
for the State of Iowa

701—10.125(422,453B) Duration of the bond. The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated as provided by law.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—10.126(422,453B) Exoneration of the bond. Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the director when any of the following events occur: upon full payment of the tax, penalty, interest, costs or fees found to be due; upon filing a bond for the purposes of judicial review which bond is sufficient to secure the unpaid tax penalty, interest, costs and fees; or if no additional tax, penalty, interest, costs or fees are found to be due that have not been previously paid, upon entry of a final unappealable order which resolves the underlying protest.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

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CHAPTER 12
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

[Prior to 12/17/86, Revenue Department[730]]

Rescinded **ARC 6398C**, IAB 7/13/22, effective 7/1/22

CHAPTER 13
PERMITS

[Prior to 12/17/86, Revenue Department[730]]

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CHAPTER 14
COMPUTATION OF TAX

[Prior to 12/17/86, Revenue Department[730]]

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CHAPTER 15
DETERMINATION OF A SALE AND SALE PRICE

[Prior to 12/17/86, Revenue Department[730]]

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CHAPTER 16
TAXABLE SALES

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CHAPTER 17
EXEMPT SALES

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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]]

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CHAPTER 19
SETTLEMENTS—COMPROMISES AND ABATEMENTS OF TAX, PENALTY, OR INTEREST

701—19.1(421) Settlements. Pursuant to Iowa Code section 421.5, in addition to the authority granted to the department pursuant to Iowa Code section 17A.10 and notwithstanding Iowa Code section 7D.9, the department may, in its sole discretion, settle any taxes, penalties, or interest. A settlement may be a compromise or full abatement of any amount in dispute.
[**ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—19.2(421) Amounts qualifying for settlement. To be eligible for settlement under Iowa Code section 421.5, the amount must be of doubtful liability or doubtful collectability or must cause severe economic hardship, or the settlement of the amount must promote effective tax administration. The decision whether to accept a settlement amount will be based on a taxpayer's facts and circumstances; verifiable documentation is required for all grounds.

19.2(1) *Doubtful collectability.* Doubt as to collectability may exist in any case where the taxpayer's assets and discretionary income may not satisfy the full amount of the liability after satisfying senior priority liabilities. An offer to settle based on doubt as to collectability may be considered acceptable if it is unlikely that the tax, penalty, and interest can be collected in full and the offer reasonably reflects the amount the department could collect through other means, including administrative and judicial collection remedies. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the department will take into account the taxpayer's verifiable reasonable basic living expenses. In some cases, the department may accept an offer of less than the reasonable collection potential of a case if there are special circumstances.

19.2(2) *Severe economic hardship.* The department may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer severe economic hardship. Severe economic hardship is defined as the inability to pay reasonable basic living expenses. An offer to settle based on economic hardship may be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the department can collect without causing the taxpayer severe economic hardship.

19.2(3) *Doubtful liability.* A doubtful liability may exist where there is a significant doubt as to the existence or amount of the correct tax liability under the law. A doubtful liability does not exist where the liability has been established by a final court judgment or administrative ruling or final order of the department concerning the existence or amount of the liability. An offer to settle a doubtful liability may be considered acceptable if it reasonably reflects the likelihood the department could expect to collect through litigation. This analysis may include consideration of the hazards and costs of litigation that would be involved if the liability were litigated. The evaluation of the hazards and costs of litigation is not an exact science and is within the discretion of the department.

19.2(4) *Promote effective tax administration.* The department may settle to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for settling the liability that is equitable under the particular facts and circumstances of the case. Settlements pursuant to this subrule may be justified only where, due to exceptional circumstances, collection of the full liability may undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify settlement even though a similarly situated taxpayer may have paid the liability in full. The department may settle cases where doing so will promote voluntary compliance with the law. The department may decline a settlement for reasons promoting effective tax administration if the settlement of the liability would undermine compliance by taxpayers with the tax laws.
[**ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—19.3(421) Settlement procedures and limitations, generally.

19.3(1) *Whether to seek a settlement.* When determining whether to seek a settlement, a taxpayer should first consider whether a settlement is necessary. Nothing in this chapter is intended to preclude a

taxpayer who misses the time provided by law to appeal a notice of assessment from paying the amount due, filing a refund claim, and contesting any denial of that refund claim as described in Iowa Code section 421.60(2)*"h."* If a taxpayer has not received a billing but has information that would adjust the liability down, the appropriate remedy is to file an amended return within the statute of limitations. If a taxpayer has received an estimated assessment and is within three years of when the assessment was issued, the taxpayer should file a return. If a taxpayer has received an assessment and is within the time period to file an appeal, it is proper to file an appeal rather than a settlement request. If a taxpayer does not dispute the liability, but is unable to pay the liability due to financial hardship, the taxpayer should submit an offer in compromise application.

19.3(2) *Which type of settlement to seek.* Different types of settlements require different forms and procedures. Procedures for abatement, offer in compromise, and voluntary disclosure agreements are described in specific rules below. For matters currently under appeal pursuant to 701—Chapter 7, settlement requests must be submitted to the appeals section of the legal services and appeals division in accordance with 701—subrule 7.11(5). For matters currently under audit, settlement requests must be submitted to the department employee assigned to the audit.

19.3(3) *Who may authorize a department settlement.* Only the director, the deputy director, or the division administrator of the legal services and appeals division may approve and sign settlements under this chapter unless otherwise specified in rule or designated by the director.

19.3(4) *Discretionary nature of settlements.* There is no right to appeal an abatement denial, offer in compromise denial, or other settlement decision by the department under 701—Chapter 7. As described in Iowa Code section 421.5, a taxpayer shall not have the right to a settlement of any tax, penalty, or interest liability under this chapter or Iowa Code section 421.5. Any determination shall be discretionary and shall be final and conclusive except in the case of fraud or mutual mistake of material fact or as otherwise stated in a written settlement agreement between the taxpayer and the department.
[**ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—19.4(421) Applications for abatement.

19.4(1) *When to file.* Abatement is intended to be a possible remedy for taxpayers who have received a billing or refund denial letter and have information that could lead to a reduction in the liability, but failed to file a timely appeal. Grounds for abatement include doubt as to liability and promoting effective tax administration.

19.4(2) *How to file an application.* To apply, a taxpayer must submit an application for abatement in the department's prescribed paper or electronic format. The application can be submitted through GovConnectIowa or by using the form available on the department's website and following the submission instructions on the form.

19.4(3) *Required information.* A request for abatement must be submitted on the department's form. The form must be fully completed and properly signed.

19.4(4) *Review of requests.*

a. After the application has been submitted, it will be reviewed by department staff.

b. Additional information may be requested to assist the department in its review.

c. A letter will be issued to the applicant notifying the applicant of the decision to grant, deny or partially grant the abatement request. The department's decision on an abatement application will only be contained in a formal determination letter.

d. Applicants whose applications are granted in part will receive an agreement describing the terms of the partially granted abatement request and must sign and return that agreement to the department in order to receive the partially granted abatement.

e. Decisions to accept an abatement request in full or in part for doubt as to liability may be approved by the bureau chief of the compliance section of the tax management division or another staff member designated by the director.

f. Decisions to accept an abatement request to promote effective tax administration may only be approved by the director, the deputy director, or the division administrator of the legal services and appeals division.

19.4(5) *Limitations.* The department will accept applications for abatement during the appeal period but will not review such applications until the appeal period has passed. The department will generally not refund amounts already paid in response to an application for abatement. Some exceptions may include the following circumstances:

a. The application is received within three years after the return related to the application for abatement was due or within one year after the payment related to the application for abatement was made, whichever is later.

b. The application is received within one year of the final determination date of any final federal adjustment arising from an internal revenue service audit or other similar action by the internal review service with respect to the particular tax year at issue in the application.

c. Payments were received in violation of Title 11 of the United States Code.

d. Exceptional circumstances demonstrate that a refund would promote effective tax administration as described in subrule 19.2(4).

[**ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—19.5(421) Offers in compromise.

19.5(1) *When to file.* An offer in compromise packet should be used to apply for relief based on doubtful collectability or severe economic hardship.

19.5(2) *How to submit a packet.* To apply, a taxpayer must submit an offer in compromise packet in the department's prescribed paper or electronic format. An offer in compromise packet can be submitted through GovConnectIowa or by using the form available on the department's website and following the submission instructions on the form.

19.5(3) *Required information.* An offer in compromise must be submitted using the department's offer in compromise packet.

19.5(4) *Review of requests.*

a. After the packet has been submitted, it will be reviewed by department staff.

b. Additional information may be requested to assist the department in its review.

c. A letter will be issued to the applicant notifying the applicant of the decision to grant, deny or partially grant the offer in compromise request. The department's decision on an offer in compromise request will only be contained in a formal determination letter.

d. Applicants whose applications are granted in part will receive an agreement describing the terms of the partially granted offer in compromise request and must sign and return that agreement to the department in order to receive the partially granted offer in compromise.

e. Decisions to enter into an offer in compromise must be approved by the bureau chief of the central collections unit, the director, the deputy director, the division administrator of the legal services and appeals division, or another staff member designated by the director.

19.5(5) *Limitations.* The department will not review offer in compromise applications until a liability is at least one year old. Premature applications will be denied. Denial on this basis does not prevent the taxpayer from reapplying at a later date.

[**ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—19.6(421) Voluntary disclosure agreements.

19.6(1) *When to file.* Any person who is subject to Iowa tax or tax collection responsibilities may be eligible for the voluntary disclosure program. Being subject to Iowa tax may occur when a person has Iowa source income, business activities, or representatives or other presence in Iowa. Certain activities by such persons may create Iowa tax return filing requirements for Iowa source income. In addition, activities may also result in tax liabilities that are past due and owing.

19.6(2) *Purpose of the voluntary disclosure program.* The purpose of the voluntary disclosure program is to promote effective tax administration through voluntary compliance by encouraging

unregistered business entities and persons to voluntarily contact the department regarding unreported Iowa source income or other Iowa taxes described in subrule 19.6(4).

19.6(3) *Anonymity.* A person or the person's representative may initially contact the department on an anonymous basis. Anonymity of the taxpayer can be maintained until the voluntary disclosure agreement is executed by the taxpayer and the department. The voluntary disclosure program may be used by the department and the taxpayer to report previous periods of Iowa source income and to settle outstanding tax, penalty and interest liabilities, but it must also ensure future tax compliance by the taxpayer.

19.6(4) *Type of taxes eligible.* Only taxes, penalties, and interest related to the following tax types are eligible for settlement under the voluntary disclosure program: corporate income tax, franchise tax, fiduciary income tax, withholding income tax, individual income tax, composite return tax, local option school district income surtax, state sales tax, state use tax, fuel taxes, cigarette and tobacco taxes, local option tax, state and local hotel and motel taxes, automobile rental excise tax, equipment excise tax, water service excise tax, and the prepaid wireless 911 surcharge.

19.6(5) *Eligibility of the taxpayer.* The department has discretion to determine who is eligible for participation in the voluntary disclosure program. In making the determination, the department may consider the following factors:

a. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities;

b. The person must have tax due;

c. The person must not currently be under audit or examination by the department or under criminal investigation by the department;

d. The person must not have had any prior contact with the department or a representative of the department that could lead to audit or assessment associated with the tax types or tax periods sought to be addressed under the program;

e. The type and extent of activities resulting in Iowa source income;

f. Failure to report the Iowa source income or pay any liability was not due to fraud, intentional misrepresentation, an intent to evade tax, or willful disregard of Iowa tax laws; and

g. Any other factors which are relevant to the particular situation.

19.6(6) *How to file an application.*

a. Required format. To apply, a taxpayer must submit an application in the department's prescribed paper or electronic format. A voluntary disclosure application can be submitted through GovConnectIowa or by using the form available on the department's website and following the submission instructions on the form.

b. Required information. A voluntary disclosure application must be submitted using the department's form.

c. Review of the application.

(1) After the application is submitted, it will be reviewed by department staff.

(2) Additional information may be requested to assist the department in its review.

(3) The department will notify an applicant in writing regarding whether the applicant's application for participation in the program is accepted or rejected.

19.6(7) *Terms of the voluntary disclosure agreement.*

a. Discretion. The department has the discretion to settle any outstanding Iowa tax, penalty, and interest liabilities of the eligible applicant. Settlement terms are on a case-by-case basis. Items considered by the department in determining the settlement terms include: the type of tax, the tax periods at issue, the reason for noncompliance, whether the tax is deemed to be held in trust for the state of Iowa, the types of activities resulting in the tax, the frequency of the activities that resulted in the tax, and any other matters which are relevant to the particular situation.

b. Maximum scope of audit. If a taxpayer initiates the contact with the department and is eligible for the voluntary disclosure program and complies with the agreement terms, the maximum prior years for which the department will generally audit and pursue settlement and collection will be five years, absent an intent to defraud, the making of material misrepresentations of fact, or an intent to evade tax.

c. Future filing requirements. All voluntary disclosure agreements must require that the applicant file future Iowa tax returns, unless the activity by the applicant resulting in the Iowa source income has changed or there has been a change in the law, rules, or court cases that dictate a different result.

d. Audit and assessment rights. The department reserves the right to audit all returns and other documents submitted by the applicant or a third party to verify the facts and whether the terms of the voluntary disclosure agreement have been met. The department may audit information submitted by the applicant at any time within the allowed statutory limitation period. The department may also assess any tax, penalty, and interest found to be due in addition to the amount of original tax reported. The statute of limitations for assessment and statute of limitations for refunds begin to run as provided by law.

19.6(8) *Commencement of the voluntary disclosure agreement.* The voluntary agreement commences on the date the voluntary disclosure agreement is fully executed by all parties or another date specified by the agreement. Execution of the agreement is complete when the agreement is executed by the taxpayer or taxpayers and the bureau chief of the compliance section of the tax management division or another staff member designated by the director. Prior to the execution of the voluntary disclosure agreement by the taxpayer and the department, the taxpayer is not protected from the department's regular audit process if the identity of the taxpayer, as an applicant, is unknown to the department. However, if the department has knowledge of the taxpayer's identity, as an applicant, the department will not take audit action against the taxpayer during the voluntary disclosure process. If a voluntary disclosure agreement is not reached, the department may assess tax, penalty, and interest as provided by law at the time the identity of the applicant becomes known to the department.

19.6(9) *Voiding a voluntary disclosure agreement.*

a. Authority. The department has the authority to declare a voluntary disclosure agreement null and void subsequent to the execution of the agreement. The department may void the contractual agreement if the department determines that a misrepresentation of a material fact was made by the person or a third party representing the person to the department. The department may also void a voluntary disclosure agreement if the department determines any of the following has occurred:

(1) The person does not submit information requested by the department within the time period specified by the department, including any extensions granted by the department;

(2) The person fails to file future Iowa returns as agreed to in the voluntary disclosure agreement;

(3) The person does not pay the agreed settlement liability within the time period designated by the department, including any extensions of time that may be granted by the department;

(4) The person does not remit all taxes imposed upon or collected by the person for all subsequent tax periods and all tax types that are subject to the voluntary disclosure agreement;

(5) The person fails to prospectively comply with Iowa tax law. Whether the person has failed to prospectively comply with Iowa tax law is determined by the department on a case-by-case basis;

(6) The person, based on a determination by the department, materially understates the person's tax liability; or

(7) The person has made a material breach of the terms of the voluntary disclosure agreement.

b. Audit rights. Voiding of the agreement results in nonenforceability of the agreement by the applicant and allows the department to proceed to assess tax, penalty, and interest for that person's Iowa tax and tax collection responsibilities for all periods within the statute of limitations. If the applicant is justifiably rejected for the voluntary disclosure program or the agreement between the person and the department is declared by the department to be null and void, the department reserves the right to audit all returns or other documents submitted by the applicant or a third party on behalf of the applicant and to make an assessment for all tax, penalty, and interest owed. If the voluntary disclosure agreement is voided or the application for the program is rejected and the department issues an assessment, the taxpayer may appeal the assessment pursuant to 701—Chapter 7. If the department does not issue an assessment, but does reject the application or voids the agreement, such action is not subject to appeal under 701—Chapter 7 but is considered to be "other agency action."

19.6(10) *Partnerships, partners, S corporations, shareholders in S corporations, trusts, and trust beneficiaries.* Once the department has initiated an audit or investigation of any type of partnership, partners of the partnership, S corporations, a shareholder in an S corporation, a trust, or trust beneficiaries,

the department is deemed to have initiated an audit or investigation of the entity and of all those who receive Iowa source income from or have an interest in such an entity for purposes of eligibility for participation in the voluntary disclosure program.

19.6(11) *Transfer or assignment.* The terms of the voluntary disclosure agreement are valid and enforceable by and against all parties, including their transferees and assignees.

[**ARC 7192C**, IAB 12/13/23, effective 1/17/24]

These rules are intended to implement Iowa Code sections 421.5 and 421.17.

[Filed ARC 7192C (Notice ARC 7101C, IAB 10/18/23), IAB 12/13/23, effective 1/17/24]

CHAPTER 101
REPLACEMENT TAX AND STATEWIDE PROPERTY TAX
[Prior to 11/2/22, see Revenue Department[701] Ch 70]

DIVISION I
REPLACEMENT TAX

701—101.1(437A) Who must file return. Each taxpayer, as defined in Iowa Code Supplement section 437A.3(30), shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code sections 437A.8(1)*"a"* through *"f"* and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity subject to the replacement tax during the tax year, the return must contain a statement to that effect.
[Editorial change: IAC Supplement 11/2/22]

701—101.2(437A) Time and place for filing return. The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

A taxpayer whose replacement tax liability before credits is $300 or less is not required to file a return. A taxpayer should not file a replacement tax return under such circumstances.

When the due date falls on a Saturday, Sunday, or holiday, the return will be due the following day that is not a Saturday, Sunday, or holiday. If a return is placed in the mail, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mail, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: Local Government Services, Hoover State Office Building, Des Moines, Iowa 50319.
[**ARC 6551C**, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22]

701—101.3(437A) Form for filing. Returns must be made by taxpayers on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare the taxpayer's return so as to fully and clearly set forth the data required. All information shall be supplied and each direction complied with in the same manner as if the forms were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making the replacement tax return.

Returns received which are not completed, but merely state "see schedule attached," "no tax due," or some other conclusionary statement are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return's being filed after the due date.
[Editorial change: IAC Supplement 11/2/22]

701—101.4(437A) Payment of tax. Payment of tax shall not accompany the filing of the replacement tax return with the director. Payment of tax shall never be made to the director or the state of Iowa. Payment of the proper amount of tax due shall be made to the appropriate county treasurer upon notification by the county treasurer to the taxpayer of the taxpayer's replacement tax obligation.
[Editorial change: IAC Supplement 11/2/22]

701—101.5(437A) Statute of limitations.

101.5(1) The director has three years after a return is filed to determine the tax due if the return is found to be incorrect and to give notice to the taxpayer of the determination. This three-year statute of limitations does not apply in the instances specified in 101.5(2).

101.5(2) If a taxpayer files a false or fraudulent return with the intent to evade any tax, the correct amount of tax due may be determined by the director at any time after the return has been filed.

101.5(3) If a taxpayer fails to file a return, the three-year period of limitations does not begin to run until the return is filed with the director.

101.5(4) Waiver of statute of limitations. The department and the taxpayer may extend the three-year period of limitations provided in 101.5(1) above by signing a waiver agreement form provided by the department. The agreement shall designate the period of extension and the tax year for which the extension applies. The agreement shall provide that the taxpayer may file a claim for refund of replacement tax at any time prior to the expiration of the agreement.

[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—101.6(437A) Billings.

101.6(1) *Notice of adjustments.*

a. An agent, auditor, clerk, or employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that items subject to tax may not have been listed or included as taxable, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of this discovery by ordinary mail. This notice is not an assessment. It informs the person what amount would be due if the information discovered is correct. A copy of such notice shall also be sent to the appropriate county treasurer.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due to the appropriate county treasurer. If payment is made, and the person wishes to contest the matter, the person should file a timely claim for refund. However, payment will not be required until an assessment has been made (although interest will continue to accrue if timely payment is not made). If no payment has been made, the person may discuss with the agent, auditor, clerk, or employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. This person may also ask for a conference with the Department of Revenue, Local Government Services, Hoover State Office Building, Des Moines, Iowa. Documents and records supporting the person's position may be required.

c. Power of agent, auditor, or employee to compromise tax claim. No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk, or employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

101.6(2) *Notice of assessment.* If, after following the procedure outlined in 70.6(1)*"b,"* no agreement is reached and the person does not pay the amount determined to be correct to the appropriate county treasurer, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer with a copy sent to the appropriate county treasurer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.8(17A) or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) to the appropriate county treasurer and file a refund claim with the director within the applicable period provided in Iowa Code section 437A.14(1)*"b"* for filing such claims.

101.6(3) *Supplemental assessments and refund adjustments.* The director may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the director shall notify the appropriate county treasurer. Such resolution shall preclude the director and the taxpayer from making a

supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax year unless there is a showing of mathematical or clerical error or showing of fraud or misrepresentation.
[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 6551C**, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22]

701—101.7(437A) Refunds.

101.7(1) A claim for refund of replacement tax may be made on a form obtainable from the department. All claims for refund should be filed with the director, and not with the county treasurer. In the case of a refund claim filed by an agent or representative of the taxpayer, a power of attorney must accompany the claim. All claims for refund must be in writing.

101.7(2) A taxpayer shall not offset a refund or overpayment of tax for one tax year as a prior payment of tax of a subsequent tax year on the tax return of a subsequent year unless the provisions of Iowa Code section 437A.8(7) are applicable.

101.7(3) Refunds—statute of limitations. The statute of limitations with respect to which refunds or credits may be claimed are:

a. The later of three years after the due date of the tax payment upon which the refund or credit is claimed; or one year after which such payment was actually made.

b. Ninety days after the due date of the tax payment upon which refund or credit is claimed if the tax is alleged to be unconstitutional.

101.7(4) No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid to the appropriate county treasurer under written protest which specifies the particulars of the alleged unconstitutionality.

101.7(5) The taxpayer responsible for paying the tax, or the taxpayer's successors, are the only persons eligible to file claims for refund or credit of the tax with the director and are the only persons eligible to receive such refunds or credits.

101.7(6) The director will promptly notify the appropriate county treasurer of the acceptance or denial of any refund claim or credit. The county treasurer shall pay the refund claim or portion thereof accepted by the director.

101.7(7) A taxpayer has 60 days from the date of the notice of denial of a refund or credit, in whole or in part, to file a protest according to the provisions of rule 701—7.8(17A).
[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 11/2/22]

701—101.8(437A) Abatement of tax. The abatement provisions of 701—Chapter 19 are applicable to replacement tax. In the event that the taxpayer files a request for abatement, the appropriate county treasurer shall be notified. The department's decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.
[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 11/2/22; **ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—101.9(437A) Taxpayers required to keep records.

101.9(1) Records required. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

a. Records associated with the number of taxable kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year. Such records shall also include those for calendar year 1998.

b. Records associated with the number of taxable kilowatt-hours of electricity consumed within each electric competitive service area during the tax year where the delivery of such electricity is not subject to the replacement delivery tax.

c. Records associated with the average centrally assessed property tax liability allocated to electric service of each taxpayer, other than a municipal utility, principally serving an electric competitive service area and of each generation and transmission electric cooperative for the assessment years 1993 through

1997. For municipal utilities, such records shall be for the 1997 assessment year and shall also include records associated with items in 1999 Iowa Acts, Senate File 473, section 30.

d. Records associated with the number of taxable kilowatt-hours of electricity generated within the state of Iowa during the tax year. Such records shall also include those for calendar year 1998.

e. Records associated with taxable pole miles of transmission lines owned or leased by the taxpayer for each of the line voltage tiers subject to tax imposed in Iowa Code section 437A.7. Such records shall also include those for calendar year 1998.

f. Records associated with the excess property tax liability of each generation and transmission electric cooperative assigned to the electric competitive service areas principally served on January 1, 1999, by its distribution electric cooperative members and by those municipal utilities which were purchasing members of a municipal electric cooperative association that is a member of the generation and transmission electric cooperative. Such records shall include those for calendar year 1998. "Excess property tax liability" means the amount by which the average centrally assessed property tax liability for the assessment years 1993 through 1997 of a generation and transmission electric cooperative exceeds the tentative generation and transmission taxes which would have been imposed on such generation and transmission electric cooperative under Iowa Code sections 437A.6 and 437A.7 for calendar year 1998.

g. Records associated with the number of taxable therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year. Such records shall also include those for calendar year 1998.

h. Records associated with the number of taxable therms of natural gas consumed within each natural gas competitive service area during the tax year where the delivery of such natural gas is not subject to the replacement delivery tax.

i. Records associated with the average centrally assessed property tax liability allocated to natural gas service of each taxpayer, other than a municipal utility, principally serving a natural gas competitive service area for the assessment years 1993 through 1997. For municipal utilities, such records shall be for the 1997 assessment year and shall also include records associated with items in 1999 Iowa Acts, Senate File 473, section 30.

j. Records associated with the taxpayer's calculation of the tentative replacement taxes due for the tax year and required to be shown on the tax return.

k. Records associated with increases or decreases in the tentative replacement tax required to be shown to be due where the electric and natural gas delivery tax rates are subject to recalculation under the provisions of Iowa Code section 437A.8(7).

l. Records associated with the kilowatt-hours of electricity and the therms of natural gas entitled to be exempted from the taxes imposed by Iowa Code sections 437A.4 to 437A.7 by the enumerated exemptions therein.

m. Records associated with kilowatt-hours of electricity and therms of natural gas delivered in a manner set forth in Iowa Code sections 437A.4(7) and 437A.5(6).

n. All work papers associated with any of the records described in this rule.

o. Records pertaining to any additions or deletions of property described as exempt from local property tax in Iowa Code section 437A.16.

p. Records associated with allocation of property described in paragraph *"o"* above among local taxing districts.

101.9(2) The records required to be maintained by these rules shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the replacement taxes are reported, or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

[Editorial change: IAC Supplement 11/2/22]

701—101.10(437A) Credentials. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No

charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.
[Editorial change: IAC Supplement 11/2/22]

701—101.11(437A) Audit of records. The director or the director's authorized representative shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a tax return filed, of information presented, or for estimating the tax liability of a taxpayer. When a taxpayer fails or refuses to produce the records for examination upon request, the director shall have authority to require, by a subpoena, the attendance of the taxpayer and any other witness(es) whom the director deems necessary or expedient to examine and compel the taxpayer and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to the replacement tax.
[Editorial change: IAC Supplement 11/2/22]

701—101.12(437A) Collections/reimbursements. Neither the director nor the department is empowered to receive any payment of replacement tax. Therefore, taxpayers should never pay any replacement tax to the director or the state of Iowa. All payments of replacement tax are to be made to the appropriate county treasurer.

101.12(1) A person in possession of a renewable energy tax credit certificate issued pursuant to Iowa Code chapter 476C or a wind energy tax credit issued pursuant to Iowa Code chapter 476B may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to Iowa Code chapter 437A in an amount not more than the person received in renewable energy tax credit certificates or wind energy tax credit certificates. To obtain the reimbursement, the person shall include with the return required under Iowa Code section 437A.8 the renewable energy tax credit certificates or the wind energy tax credit certificates and provide any other information the director may require. The director shall direct that a warrant be issued to the person for an amount equal to the tax imposed and paid by the person. Any credit in excess of the person's tax liability may be claimed as a refund for the following seven years. Pursuant to Iowa Code section 437A.14, a taxpayer may file a claim for refund with the director within three years after the replacement tax became due. If the renewable energy or wind energy tax credit claim exceeds the replacement tax due in a year, the taxpayer has seven years to carry over the excess credit. Pursuant to Iowa Code section 476C.4(6), a person may not receive both a renewable energy tax credit and a wind energy tax credit. For the wind energy tax credit, the reimbursement applies to a qualified facility placed in service on or after July 1, 2005, but before July 1, 2012. For the renewable energy tax credit, the reimbursement applies to a qualified facility placed in service on or after July 1, 2005, but before January 1, 2017. The utilities board shall notify the department of revenue of the amount of kilowatt hours of electricity purchased from a renewable energy facility or the amount of kilowatt hours generated and purchased from a qualified wind energy facility or generated and used on site by the qualified wind energy facility. The department of revenue shall calculate the amount of the tax credit and issue the tax credit certificate. Wind energy and renewable energy tax credit certificates may be transferred, and a replacement tax credit certificate may reflect a different type of tax than the type of tax noted on the original tax credit certificate.

101.12(2) A person in possession of a soy-based transformer fluid tax credit certificate issued pursuant to Iowa Code chapter 476D may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to Iowa Code chapter 437A in an amount not more than the person received in soy-based transformer fluid tax credit certificates. To obtain the reimbursement, the person shall attach to the return required under section 437A.8 the soy-based transformer fluid tax credit certificates issued to the person and provide any other information the director may require. The director shall direct a warrant to be issued to the person for an amount equal to the tax imposed and paid by the person pursuant to Iowa Code chapter 437A but for not more than the amount of the soy-based

transformer fluid tax credit certificates attached to the return. This subrule is rescinded December 31, 2009.

This rule is intended to implement Iowa Code sections 437A.17B and 437A.17C and chapters 476B and 476D and chapter 476C as amended by 2014 Iowa Acts, Senate File 2343.
[**ARC 1665C**, IAB 10/15/14, effective 11/19/14; Editorial change: IAC Supplement 11/2/22]

701—101.13(437A) Information confidential. Iowa Code subsections 437A.14(2) and (3) apply generally to the director, deputies, auditors, and present or former officers and employees of the department. Disclosure of the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information is prohibited. Other persons having acquired this confidential information will be bound by the same rules of secrecy under these Iowa Code provisions as any member of the department and will be subject to the same penalties for violations as provided by law.
[Editorial change: IAC Supplement 11/2/22]

DIVISION II
STATEWIDE PROPERTY TAX

701—101.14(437A) Who must file return. Each taxpayer shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code section 437A.21 and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity for which the taxpayer's property was subject to the statewide property tax during the tax year, the return must contain a statement to that effect.
[Editorial change: IAC Supplement 11/2/22]

701—101.15(437A) Time and place for filing return. The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

When the due date falls on a Saturday, Sunday, or holiday, the return will be due the following day that is not a Saturday, Sunday, or holiday. If a return is placed in the mail, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mail, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: Local Government Services, Hoover State Office Building, Des Moines, Iowa 50319.
[**ARC 6551C**, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22]

701—101.16(437A) Form for filing. Replacement tax rule 701—101.3(437A) is incorporated herein by reference.
[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—101.17(437A) Payment of tax. Payment of the tax required to be shown due on the statewide property tax return shall accompany the filing of the return. All checks shall be made payable to the Iowa Department of Revenue. Failure to pay the tax required to be shown due on the tax return by the due date shall render the tax delinquent.
[**ARC 5712C**, IAB 6/16/21, effective 7/21/21; Editorial change: IAC Supplement 11/2/22]

701—101.18(437A) Statute of limitations. Replacement tax rule 701—101.5(437A) is incorporated herein by reference.
[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—101.19(437A) Billings.

101.19(1) *Notice of adjustments.* Replacement tax subrule 101.6(1) is incorporated herein by reference.

101.19(2) *Notice of assessment.* If, after following the procedure outlined in 101.6(1)*"b,"* no agreement is reached and the person does not pay the amount determined to be correct to the director, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.8(17A) or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) to the director and file a refund claim with the director within the applicable period provided in Iowa Code sections 437A.22 and 437A.14(1)*"b"* for filing such claims.

101.19(3) *Supplemental assessments.* Replacement tax subrule 101.6(3) is incorporated by reference.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—101.20(437A) Refunds. Replacement tax subrules 101.7(1) to 101.7(3), 101.7(5) and 101.7(7) are incorporated herein by reference.

No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid under written protest which specifies the particulars of the alleged unconstitutionality.

[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—101.21(437A) Abatement of tax. The abatement provisions of 701—Chapter 19 are applicable to the statewide property tax.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 11/2/22; **ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—101.22(437A) Taxpayers required to keep records.

101.22(1) Records required. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

a. Records associated with the assessed value and base year assessed value of property subject to the statewide property tax.

b. Records associated with the computation of the statewide property tax required to be shown due on the tax return.

c. Records associated with the book value of the local amount of any major addition by local taxing district.

d. Records associated with the book value of the statewide amount of any major addition.

e. Records associated with the transfer or disposal of all operating property in the preceding calendar year, by local taxing district.

f. Records associated with the book value of all other taxpayer property subject to the statewide property tax.

g. Records associated with the book value of any major addition, by situs, eligible for the urban revitalization exemption provided for in Iowa Code chapter 404.

h. All work papers associated with any of the records described in this rule.

i. Records associated with allocation of property subject to statewide property tax among local taxing districts.

101.22(2) The records required to be maintained by these rules shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the statewide property tax is reported, or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

[Editorial change: IAC Supplement 11/2/22]

701—101.23(437A) Credentials. Replacement tax rule 701—101.10(437A) is incorporated herein by reference.
[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—101.24(437A) Audit of records. Replacement tax rule 701—101.11(437A) is incorporated herein by reference.
[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

These rules are intended to implement Iowa Code chapter 437A as amended by 2007 Iowa Acts, Senate File 278.

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[Editorial change: IAC Supplement 10/18/23]
[Filed ARC 7192C (Notice ARC 7101C, IAB 10/18/23), IAB 12/13/23, effective 1/17/24]

CHAPTER 108
REPLACEMENT TAX AND STATEWIDE PROPERTY TAX ON RATE-REGULATED WATER UTILITIES

[Prior to 11/2/22, see Revenue Department[701] Ch 78]

REPLACEMENT TAX

701—108.1(437B) Who must file return. Beginning with property tax years and replacement tax years beginning on or after January 1, 2013, each taxpayer, as defined in Iowa Code section 437B.2, shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code sections 437B.4(1)*"a"* and *"b"* and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity subject to the replacement tax during the tax year, the return must contain a statement to that effect.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22]

701—108.2(437B) Time and place for filing return. The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

A taxpayer whose replacement tax liability before credits is $300 or less is not required to file a return. A taxpayer should not file a replacement tax return under such circumstances.

When the due date falls on a Saturday, Sunday, or holiday, the return will be due the following day that is not a Saturday, Sunday, or holiday. Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the mail, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after the due date for filing. The functional meaning of this requirement is that if the return is placed in the mail, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: Local Government Services, Hoover State Office Building, Des Moines, Iowa 50319.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; **ARC 6551C**, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22]

701—108.3(437B) Form for filing. Returns must be made by taxpayers on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for proper forms to the department in ample time to have the taxpayers' returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare the taxpayer's return so as to fully and clearly set forth the data required. All information shall be supplied and each direction complied with in the same manner as if the forms were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making the replacement tax return.

Returns received which are not completed, but merely state "see schedule attached," "no tax due," or some other conclusionary statement are not considered to be properly filed returns and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return's being filed after the due date.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22]

701—108.4(437B) Payment of tax. Payment of tax shall not accompany the filing of the replacement tax return with the director. Payment of tax shall not be made to the director or the state of Iowa. Payment

of the proper amount of tax due shall be made to the appropriate county treasurer upon notification by the county treasurer to the taxpayer of the taxpayer's replacement tax obligation.
[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22]

701—108.5(437B) Statute of limitations.

108.5(1) The director has three years after a return is filed to determine the tax due if the return is found to be incorrect and to give notice to the taxpayer of the determination. This three-year statute of limitations does not apply in the instances specified in subrule 108.5(2).

108.5(2) If a taxpayer files a false or fraudulent return with the intent to evade any tax, the correct amount of tax due may be determined by the director at any time after the return has been filed.

108.5(3) If a taxpayer fails to file a return, the three-year statute of limitations does not begin until the return is filed with the director.

108.5(4) Waiver of statute of limitations. The department and the taxpayer may extend the three-year period of limitations provided in subrule 108.5(1) above by signing a waiver agreement form provided by the department. The agreement shall designate the period of extension and the tax year for which the extension applies. The agreement shall provide that the taxpayer may file a claim for refund of replacement tax at any time prior to the expiration of the agreement.
[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—108.6(437B) Billings.

108.6(1) *Notice of adjustments.*

a. Authorization to send notice of adjustments. An agent, auditor, clerk, or employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that items subject to tax may not have been listed or included as taxable, in whole or in part, or that no return was filed when one was due is authorized to notify the taxpayer of this discovery by ordinary mail. This notice is not an assessment. It informs the taxpayer what amount would be due if the information discovered is correct. A copy of such notice shall also be sent to the appropriate county treasurer.

b. Right of taxpayer upon receipt of notice of adjustment. A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due to the appropriate county treasurer. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should file a timely claim for refund. However, payment will not be required until an assessment has been made, although interest will continue to accrue if timely payment is not made. If no payment has been made, the taxpayer may discuss with the agent, auditor, clerk, or employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. The taxpayer may also ask for a conference with the Department of Revenue, Local Government Services, Hoover State Office Building, Des Moines, Iowa. Documents and records supporting the taxpayer's position may be required.

c. Power of agent, auditor, or employee to compromise tax claim. No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk, or employee who notified the taxpayer of the discrepancy is limited to the determination of the correct amount of tax.

108.6(2) *Notice of assessment.* If, after following the procedure outlined in paragraph 108.6(1)*"b,"* no agreement is reached and the taxpayer does not pay the amount determined to be correct to the appropriate county treasurer, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer with a copy sent to the appropriate county treasurer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.8(17A), or if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) to the appropriate county treasurer and file a refund claim with the director within the applicable period provided in Iowa Code section 437B.10(1)*"b"* for filing such claims.

108.6(3) *Supplemental assessments and refund adjustments.* The director may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the director shall notify the appropriate county treasurer. Such resolution shall preclude the director and the taxpayer from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax year unless there is a showing of mathematical or clerical error or showing of fraud or misrepresentation.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; **ARC 6551C**, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—108.7(437B) Refunds.

108.7(1) A claim for refund of replacement tax may be made on a form obtainable from the department. All claims for refund should be filed with the director and not with the county treasurer. In the case of a refund claim filed by an agent or representative of the taxpayer, a power of attorney must accompany the claim. All claims for refund must be in writing.

108.7(2) A taxpayer shall not offset a refund or overpayment of tax for one tax year as a prior payment of tax of a subsequent tax year on the tax return of a subsequent year unless the provisions of Iowa Code section 437B.4(5) are applicable.

108.7(3) Refunds—statute of limitations. The statute of limitations with respect to which refunds or credits may be claimed are:

a. The later of three years after the due date of the tax payment upon which the refund or credit is claimed or one year after which such payment was actually made.

b. Ninety days after the due date of the tax payment upon which refund or credit is claimed if the tax is alleged to be unconstitutional.

108.7(4) No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid to the appropriate county treasurer under written protest which specifies the particulars of the alleged unconstitutionality.

108.7(5) The taxpayer responsible for paying the tax, or the taxpayer's successors, are the only persons eligible to file claims for refund or credit of the tax with the director and are the only persons eligible to receive such refunds or credits.

108.7(6) The director will promptly notify the appropriate county treasurer of the acceptance or denial of any refund claim or credit. The county treasurer shall pay the refund claim or portion thereof accepted by the director.

108.7(7) A taxpayer has 60 days from the date of the notice of denial of a refund or credit, in whole or in part, to file a protest according to the provisions of rule 701—7.8(17A).

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22]

701—108.8(437B) Abatement of tax. The abatement provisions of 701—Chapter 19 are applicable to replacement tax. In the event that the taxpayer files a request for abatement with the department, the appropriate county treasurer shall be notified. The department's decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; **ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—108.9(437B) Taxpayers required to keep records.

108.9(1) Records required by taxpayers taxed under Iowa Code chapter 437B. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

a. Records associated with the total number of gallons of water carried through the taxpayer's distribution system during the tax year and during each of the immediately preceding five calendar years. For calendar years prior to tax year 2013, the total number of gallons of water carried through the taxpayer's distribution system is calculated as though Iowa Code chapter 437B was in effect for such calendar year.

b. Records associated with the total amount of nonrevenue water, as that term is defined in Iowa Code section 437B.2(9), carried through the taxpayer's distribution system during the tax year and during each of the immediately preceding five calendar years. For calendar years prior to tax year 2013, the total number of gallons of nonrevenue water carried through the taxpayer's distribution system is calculated as though Iowa Code chapter 437B was in effect for such calendar year.

c. Records associated with the total taxable gallons of water delivered by the taxpayer to consumers, as that term is defined in Iowa Code section 437B.2(2), within the service area during the tax year and during each of the immediately preceding five calendar years. For calendar years prior to tax year 2013, the total taxable gallons delivered by the taxpayer to consumers by the water utility is the difference between the gallons of water calculated in paragraphs 108.9(1)*"a"* and *"b."*

d. For tax years 2013, 2014, and 2015, records associated with property tax amounts due and payable as the result of assessment years 2010 and 2011.

e. Records associated with the taxpayer's calculation of the tentative replacement taxes due for the tax year and required to be shown on the tax return.

f. Records associated with increases or decreases in the tentative replacement tax required to be shown to be due where the replacement delivery tax rates are subject to recalculation under the provisions of Iowa Code section 437B.4(5).

g. All work papers associated with any of the records described in this subrule.

h. Records pertaining to any additions or deletions of property described as exempt from local property tax in Iowa Code section 437B.12.

i. Records associated with allocation of property described in paragraph 108.9(1)*"h"* above among local taxing districts.

108.9(2) The records required to be maintained by this rule shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the replacement taxes are reported or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—108.10(437B) Credentials. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22]

701—108.11(437B) Audit of records. The director or the director's authorized representative shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a tax return filed or of information presented or for estimating the tax liability of a taxpayer. When a taxpayer fails or refuses to produce the records for examination upon request, the director shall have authority to require, by a subpoena, the attendance of the taxpayer and any other witness(es) whom the director deems necessary or expedient to examine and compel the taxpayer and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to the replacement tax.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22]

701—108.12(437B) Information confidential. Iowa Code sections 437B.10(2) and 437B.10(3) apply generally to the director, deputies, auditors, and present or former officers and employees of the department. Disclosure of the gallons of water delivered by a taxpayer taxed under Iowa Code chapter 437B in a service area disclosed on a tax return, return information, or investigative or audit information is prohibited. Other persons having acquired this confidential information will be bound by the same rules of secrecy under these Iowa Code provisions as any member of the department and will be subject to the same penalties for violations as provided by law.
[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22]

STATEWIDE PROPERTY TAX

701—108.13(437B) Who must file return. Each taxpayer shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code section 437B.17 and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity for which the taxpayer's property was subject to the statewide property tax during the tax year, the return must contain a statement to that effect.
[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22]

701—108.14(437B) Time and place for filing return. The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

When the due date falls on a Saturday, Sunday, or holiday, the return will be due the following day that is not a Saturday, Sunday, or holiday. Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the mail, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mail, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: Local Government Services, Hoover State Office Building, Des Moines, Iowa 50319.
[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; **ARC 6551C**, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22]

701—108.15(437B) Form for filing. Rule 701—108.3(437B) is incorporated herein by reference.
[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—108.16(437B) Payment of tax. Payment of the tax required to be shown due on the statewide property tax return shall accompany the filing of the return. All checks shall be made payable to the Iowa Department of Revenue. Failure to pay the tax required to be shown due on the tax return by the due date shall render the tax delinquent.
[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; **ARC 5712C**, IAB 6/16/21, effective 7/21/21; Editorial change: IAC Supplement 11/2/22]

701—108.17(437B) Statute of limitations. Rule 701—108.5(437B) is incorporated herein by reference.
[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—108.18(437B) Billings.

108.18(1) *Notice of adjustments.* Subrule 108.6(1) is incorporated herein by reference.

108.18(2) *Notice of assessment.* If, after following the procedure outlined in paragraph 108.6(1)*"b,"* no agreement is reached and the person does not pay the amount determined to be correct to the director,

a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.8(17A), or if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) to the director and file a refund claim with the director within the applicable period provided in Iowa Code sections 437B.10 and 437B.18 for filing such claims.

108.18(3) *Supplemental assessments.* Subrule 108.6(3) is incorporated herein by reference.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—108.19(437B) Refunds. Subrules 108.7(1) to 108.7(3), 108.7(5) and 108.7(7) are incorporated herein by reference.

No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid under written protest which specifies the particulars of the alleged unconstitutionality.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—108.20(437B) Abatement of tax. The abatement provisions of 701—Chapter 19 are applicable to the statewide property tax.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; **ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—108.21(437B) Taxpayers required to keep records.

108.21(1) Records required. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

a. Records associated with the assessed value and base year assessed value of property subject to the statewide property tax.

b. Records associated with the computation of the statewide property tax required to be shown due on the tax return.

c. Records associated with the book value of the local amount of any major addition by the local taxing district.

d. Records associated with the book value of the statewide amount of any major addition.

e. Records associated with the transfer or disposal of all operating property, as that term is defined in Iowa Code section 437B.2(10), in the preceding calendar year, by local taxing district.

f. Records associated with the book value of all other taxpayer property subject to the statewide property tax.

g. Records associated with the book value of any major addition, by situs, eligible for the urban revitalization exemption provided for in Iowa Code chapter 404.

h. All work papers associated with any of the records described in this rule.

i. Records associated with allocation of property subject to statewide property tax among local taxing districts.

108.21(2) The records required to be maintained by these rules shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the statewide property tax is reported or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22]

701—108.22(437B) Credentials. Rule 701—108.10(437B) is incorporated herein by reference.

[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—108.23(437B) Audit of records. Rule 701—108.11(437B) is incorporated herein by reference.
[**ARC 0965C**, IAB 8/21/13, effective 8/2/13; **ARC 1105C**, IAB 10/16/13, effective 11/20/13; **ARC 2696C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

These rules are intended to implement Iowa Code chapter 437B.

[Filed Emergency ARC 0965C, IAB 8/21/13, effective 8/2/13]
[Filed ARC 1105C (Notice ARC 0966C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]
[Filed ARC 2696C (Notice ARC 2574C, IAB 6/8/16), IAB 8/31/16, effective 10/5/16]
[Filed ARC 5712C (Notice ARC 5579C, IAB 4/21/21), IAB 6/16/21, effective 7/21/21]
[Filed ARC 6551C (Notice ARC 6450C, IAB 8/10/22), IAB 10/5/22, effective 11/9/22]
[Editorial change: IAC Supplement 11/2/22]
[Editorial change: IAC Supplement 10/18/23]
[Filed ARC 7192C (Notice ARC 7101C, IAB 10/18/23), IAB 12/13/23, effective 1/17/24]

CHAPTER 254
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]
[Prior to 9/7/22, see Revenue Department[701] Ch 81]

701—254.1(453A) Definitions. As used in this title the following definitions apply:

"Bank" means a bank designated and authorized by the director of revenue to sell cigarette stamps and set cigarette meters.

"Carton" means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

"Cigarette licensee" means any person who has or is required to obtain a permit of any kind under Iowa Code chapter 453A, division I.

"Counterfeit cigarettes" means cigarettes, packages of cigarettes, cartons of cigarettes or other containers of cigarettes with a label, trademark, service mark, trade name, device, design, or word adopted or used by a cigarette manufacturer to identify its product that is false or used without authority of the cigarette manufacturer.

"Department" means the Iowa department of revenue.

"Director" means the director of the department, or the director's authorized representative.

"License" and *"permit"* are used interchangeably.

"Licensee" means any person holding or required to obtain a permit or license of any kind under Iowa Code chapter 453A.

"Meter settings" means Iowa cigarette meters which imprint indicia on cigarette packages.

"Package" or *"pack"* means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

"Revenue" means any evidence of tax on cigarettes required by the department to be affixed to individual packages of cigarettes.

"Stamps" means Iowa Fuson stamps, 30,000 to a roll and Iowa hand stamps of any quantity authorized by the director to be applied to packages of cigarettes and little cigars.

"Supplier" means any person or firm authorized to manufacture or supply cigarette stamps for the department.

"Tax" means the tax imposed under Iowa Code chapter 453A on cigarettes or other tobacco products.

"Taxpayer" means any person required to collect or remit tax directly to the department or required to be licensed or to file any report or return or keep records under Iowa Code chapter 453A.

"Tobacco" means the same as "tobacco products" as defined in Iowa Code section 453A.42.

"Tobacco licensee" means any person who has or is required to obtain a permit of any kind under Iowa Code chapter 453A, division II.

In addition to these definitions, the definitions contained in Iowa Code sections 421B.2, 453A.1, and 453A.42 apply to these rules.

This rule is intended to implement Iowa Code chapter 453A as amended by 2004 Iowa Acts, Senate File 2296.

[**ARC 6508C**, IAB 9/7/22, effective 10/12/22]

701—254.2(453A) Credentials and receipts. Employees of the department have official credentials and the taxpayer should require proof of the identity of any person claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer's name, address and permit number; the purpose for the payment; and the amount of the payment. The taxpayer should retain all receipts, and only official receipts for a cash payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 453A.25 and 453A.49.

[**ARC 6508C**, IAB 9/7/22, effective 10/12/22]

701—254.3(453A) Examination of records. Within three years after a return or report is filed or within three years after the report or return became due, whichever is later, the department shall examine it, determine the amount of cigarette or tobacco tax due, and give notice of assessment to the taxpayer. If no return or report has been filed, the department may determine the amount of tax due and give notice thereof. The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report or return made with the intent to evade tax, or in the case of a failure to file a report or return, or if a person purchases or is in possession of unstamped cigarettes. The three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies and must provide that a claim for refund may be filed at any time during the period of extension.

Whenever books and records are examined by an employee designated by the director, whether to verify a return, report, or claim for refund or in making an audit, an assessment will be issued for any amount of tax due or a refund made for any amount of tax overpaid.

This rule is intended to implement Iowa Code sections 453A.15, 453A.28, and 453A.46 as amended by 2004 Iowa Acts, Senate File 2296.

[**ARC 6508C**, IAB 9/7/22, effective 10/12/22]

701—254.4(453A) Records. Every taxpayer subject to the provisions of Iowa Code chapter 453A shall keep, preserve, and make available to the department records for a period of three years. The following is a list of records subject to the provisions of this rule. For taxpayers using an electronic data interchange process or technology, also see 701—subrule 11.4(4).

254.4(1) *Cigarette manufacturer.* Licensed cigarette manufacturers are required to keep the following records.

a. Records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.

b. Records evidencing the transportation of cigarettes into Iowa.

c. Records, including invoices, showing all sales of cigarettes to licensees.

d. A record of all stamps purchased.

e. Copies of all reports filed with the department.

Unlicensed cigarette manufacturers shipping cigarettes into Iowa are asked to keep records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.

Nothing in this rule shall be construed to affect the provisions of P.L. 95-575 (Contraband Cigarette Act, 18 U.S.C. Ch. 114) or P.L. 81-363 (Jenkins Act, 15 U.S.C., Sec. 375).

254.4(2) *Cigarette distributing agent.*

a. Records of the receipt of all cigarettes showing the amount of cigarettes received and from whom received.

b. Records of all distribution of cigarettes showing the amount of cigarettes shipped, to whom and at whose direction the cigarettes were distributed.

c. Records showing all exports of cigarettes.

d. Copies of all reports filed with the department.

e. Detailed inventory records.

f. Freight receiving and shipping records.

254.4(3) *Cigarette distributors.*

a. Records, including invoices, showing the purchase of all cigarettes sold, used or stored in Iowa.

b. Records, including invoices, showing the sale of cigarettes in Iowa.

c. Detailed inventory records.

d. Freight receiving and shipping records.

e. A record of all stamps purchased.

f. Copies of all reports filed with the department.

254.4(4) *Wholesaler.*

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Records, including invoices, evidencing the sale of all cigarettes.

c. Detailed inventory records.

254.4(5) *Cigarette vendor.*

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Records evidencing the sale of cigarettes.

c. Inventory records.

d. Records of all cigarette vending machines owned, furnished, installed, serviced, operated or maintained by the vendor and the location of each.

254.4(6) *Cigarette retailer.*

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Inventory records.

254.4(7) *Tobacco distributor.* The same records as a cigarette distributor but with respect to tobacco, excluding records of stamps purchased. (See 254.4(3))

254.4(8) *Tobacco subjobber.* The same records as a cigarette wholesaler but with respect to tobacco.

254.4(9) *Tobacco retailer.* The same records as a cigarette retailer but with respect to tobacco.

254.4(10) *Common carrier engaged in transporting cigarettes or tobacco products into Iowa.*

a. Copies of bills of lading or manifests as to each transportation of cigarettes or tobacco.

b. Log book or trip sheets.

254.4(11) *Microfilm and related records system.* Microfilm, microfiche, COM (computer on machine) and other related reduction in storage systems will be referred to as "microfilm" in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those that have been approved by the Internal Revenue Service under Revenue Procedure 76-43, Section 302. However, microfilm reproductions of supporting records of detail, such as sales invoices, purchase invoices, credit memoranda, etc., may be allowed providing all the following conditions are met and accepted by the taxpayer.

a. Appropriate facilities are provided to ensure the preservation and readability of the films.

b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.

d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.

e. Any audit of "detail" on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director's designated representative.

f. A posting reference must be on each invoice.

g. Credit memoranda must carry a reference to the document evidencing the original transaction.

h. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

254.4(12) *Automatic data processing records.* Automatic data processing is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forwarded to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the

director's designated representative upon request. The system should be so designed that the supporting documents, such as sales invoices, purchase invoices, credit memoranda, etc., are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source (invoice, check, etc.) to a financial statement or tax return; or the reverse; that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

(1) The application being performed;

(2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(3) The controls used to ensure accurate and reliable processing. Program and systems changes, together with their effective dates should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

254.4(13) *General requirements.* If a tax liability has been assessed and an appeal is pending to the department, district court or an appellate court, books, papers, records, memoranda or documents specified in this rule that relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

The records will be considered inadequate when the requirements of this rule are not met. The director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed (agreements must be in writing).

254.4(14) *Other persons.* The director may require any person other than those previously listed in this rule to maintain books and records as deemed necessary by the director.

This rule is intended to implement Iowa Code sections 453A.15 and 453A.45 as amended by 2004 Iowa Acts, Senate File 2296, and Iowa Code sections 453A.18, 453A.19, 453A.24, and 453A.49.
[**ARC 2657C**, IAB 8/3/16, effective 9/7/16; **ARC 6508C**, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—254.5(453A) Form of invoice. Whenever an invoice is required to be prepared or kept by Iowa Code chapter 453A or these rules, it shall minimally contain the following information:

1. The seller's name, address.
2. The purchaser's name, address and permit number (if any).
3. The date of sale.
4. All prices and discounts stated separately.
5. An indication as to whether cigarettes or tobacco products are being sold with or without tax stamps attached or tax included.
6. The origination and destination points.

This rule is intended to implement Iowa Code sections 453A.15, 453A.25, 453A.45 and 453A.49.
[**ARC 6508C**, IAB 9/7/22, effective 10/12/22]

701—254.6(453A) Audit of records—cost, supplemental assessments and refund adjustments. The department shall have the right and duty to examine or cause to be examined the books, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return or report filed or determining the tax liability of any taxpayer under Iowa Code chapter 453A.

When it is determined, upon audit, that any person dealing in cigarettes owes additional tax, the costs of the audit are assessed against such person as additional penalty.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.9(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue

involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code section 453A.30.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 6508C**, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—254.7(453A) Bonds. When bonds are required by Iowa Code chapter 453A or these rules, said bonds shall be in the form of cash, a certificate of deposit or a bond issued by a surety company licensed to do business in the state of Iowa, payable to the state of Iowa and in a form approved by the director. Bonds required by tobacco distributors must be issued by a surety company licensed to do business in Iowa. However, upon approval by the director, a cash bond or a certificate of deposit will be accepted by the department as a substitute for the surety bond. (See Iowa Code section 453A.44(4).)

This rule is intended to implement Iowa Code sections 453A.14 and 453A.44.

[**ARC 6508C**, IAB 9/7/22, effective 10/12/22]

701—254.8 to **254.10** Reserved.

701—254.11(453A) Appeal—practice and procedure before the department. Rescinded **ARC 7192C**, IAB 12/13/23, effective 1/17/24.

701—254.12(453A) Permit—license revocation.

254.12(1) *Cigarette permits.* Cigarette permits issued by the department must be revoked if the permittee willfully violates the provisions of Iowa Code section 453A.2 (sale or gift to minors). The department may revoke permits issued by the department for violation of any other provision of division I of Iowa Code chapter 453A or the rules promulgated thereunder. (Also see Iowa Code chapter 421B and rule 701—257.7(421B).) The revocation shall be subject to the provisions of rules 701—7.39(17A) and 701—7.19(17A). The notice of revocation shall be given to the permittee at least ten days prior to the hearing provided therein. The department will revoke a permit of a permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support unit in regard to the permit holder, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

If a retailer or employee of a retailer has violated Iowa Code section 453A.2 or 453A.36(6), the city council, county board of supervisors, or the Iowa department of public health shall assess a penalty as provided in Iowa Code section 453A.22(2) as amended by 2003 Iowa Acts, chapter 26. The penalty procedures are governed by Iowa Code section 453A.22(1) and the individual council's or board's procedures. Iowa Code chapter 17A does not apply to boards of supervisors or city councils. (See rule 701—257.7(421B).) The board of supervisors or the city council that issued a retail permit is required by Iowa Code chapter 252J to revoke the permit of any retailer who is an individual if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the retailer, unless the unit furnishes the board of supervisors or the city council with a withdrawal of the certificate of noncompliance.

If a permit is revoked under this subrule, except for the receipt of a certificate of noncompliance from the child support recovery unit, the permit holder cannot obtain a new cigarette permit of any kind nor may any other person obtain a permit for the location covered by the revoked permit for a period of one year unless good cause to the contrary is shown to the issuing authority. If a retail permit is suspended or revoked, the suspension or revocation applies only to the place of business where the violation occurred and not to any other place of business covered by the permit.

The department or local authority must report the suspension or revocation of a retail permit to the department of public health within 30 days of the suspension or revocation.

254.12(2) *Tobacco licenses.* The director may revoke, cancel or suspend the license of any tobacco distributor or tobacco subjobber for violation of any provision in division II of Iowa Code chapter 453A, the rules promulgated thereunder, or any other statute applicable to the sale of tobacco products. The licensee shall be given ten days' notice of a revocation hearing under Iowa Code section 453A.48(2) and

rules 701—7.39(17A) and 701—7.19(17A). No license may be issued to any person whose license has been revoked under Iowa Code section 453A.44(11) for a period of one year. The department will revoke a license of a licensee, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 453A.22 as amended by 2003 Iowa Acts, chapter 26, and sections 453A.13, 453A.44(11) and 453A.48(2).

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 6508C**, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—254.13(453A) Permit applications and denials.

254.13(1) *Applications for permits.* The application forms for all permits issued under Iowa Code chapter 453A are available from the department upon request. The applications shall include, but not be limited to:

a. The nature of the applicant's business;

b. The type of permit requested;

c. The address of the principal office of the applicant;

d. The place of business for which the permit is to apply;

e. The names and addresses of principal officers or members, not to exceed three, if the business is not a sole proprietorship;

f. A list of persons who will be the applicant's suppliers or customers or both (whichever is applicable);

g. If the applicant intends to operate as a cigarette distributor, a certificate from a manufacturer of cigarettes indicating an intention to sell unstamped cigarettes to the applicant;

h. Whether or not the applicant possesses any other permit issued under Iowa Code chapter 453A; and

i. The signature of the person making the application. For electronically transmitted applications, the application form shall state that, in lieu of the person's handwritten signature, the person's email address or the person's fax signature will constitute a valid signature.

254.13(2) *Denial of application for permit.* The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. Rule 701—201.10(423) contains characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax.

The director will deny a permit to any applicant, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

254.13(3) *Revocation of a permit.* The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the permit holder is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the

partnership. Rule 701—201.10(423) contains characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax.

The department will revoke the permit of any permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

254.13(4) *Applications for retail cigarette permits.* Applications for retail cigarette permits are supplied by the department to city councils and county boards of supervisors. The application must be obtained from and filed with the individual council or board. The board of supervisors or the city council is required by 1995 Iowa Acts, chapter 115, to deny a retail permit to any applicant, who is an individual, if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the board of supervisors or city council with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 453A.13, 453A.16, 453A.17, 453A.22, 453A.23, and 453A.44, and 1995 Iowa Acts, chapter 115.

[**ARC 6398C**, IAB 7/13/22, effective 7/1/22; **ARC 6508C**, IAB 9/7/22, effective 10/12/22]

701—254.14(453A) Confidential information. The release of information contained in any reports or returns filed under Iowa Code chapter 453A or obtained by the department in the administration of Iowa Code chapter 453A is governed by the general provisions of Iowa Code chapter 22 since there are no specific provisions relating to confidential information contained in chapter 453A. Any requests for information must be made pursuant to rule 701—5.3(17A,22,421,422). Also see rule 701—5.4(17A,22,421,422).

Any request for information pertaining to a taxpayer's business affairs, operations, source of income, profits, losses, or expenditures must be made in writing to the director. The taxpayer to whom the information relates will be notified of the request for information and will be allowed 30 days to substantiate any claim of confidentiality under Iowa Code chapter 22 or any other statute such as Iowa Code section 422.72. If substantiated, the request will be denied; otherwise, the information will be released to the requesting party. This rule will not prevent the exchange of information between state and federal agencies.

This rule is intended to implement Iowa Code sections 453A.25 and 453A.49.

[**ARC 6508C**, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—254.15 Reserved.

701—254.16(453A) Inventory tax. All persons required to obtain a permit under Iowa Code section 453A.13 as distributors shall take an inventory of all cigarettes and little cigars in their possession prior to delivery for resale upon which the tax has been affixed and all unused cigarette tax stamps and unused metered imprints in their possession at the close of business on the day preceding the effective date of an increase in the tax rate.

Persons required to take an inventory shall remit the tax due on all cigarette stamps or metered imprints and all cigarettes and little cigars with revenue affixed in their possession prior to delivery for resale within 30 days of the inventory date. The tax is equal to the difference between the amount paid for cigarette stamps or metered imprints purchased prior to the tax increase and the amount that is to be paid for cigarette stamps or metered imprints purchased after the tax increase.

In computing the inventory tax, any discount allowed or allowable under Iowa Code section 453A.8 shall not be considered.

The inventory tax is applicable only when there is an increase in the tax rate. See rule 701—255.11(453A) for an explanation of whether a refund is allowable when there is a decrease in the tax rate.

This rule is intended to implement Iowa Code sections 453A.6, 453A.40, and 453A.43.

[**ARC 6508C**, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

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TITLE IV
INDIVIDUAL INCOME TAX

CHAPTER 300
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]
[Prior to 11/2/22, see Revenue Department[701] Ch 38]

701—300.1(422) Definitions.

300.1(1) When the word *"department"* appears herein, the word refers to and is synonymous with the "Iowa department of revenue"; the word *"director"* is the "director of revenue" or the director's authorized assistants and employees.

The administration of the individual income tax is a responsibility of the department. The department is charged with the administration of the individual income tax, fiduciary tax, withholding of tax and individual estimate declarations, subject always to the rules, regulations and direction of the director.

300.1(2) The term *"computed tax"* means the amount of tax remaining before deductions of the personal exemption credit and other credits in Iowa Code chapter 422, division II, and before the computation of the school district surtax and the emergency medical services income surtax.

300.1(3) The word *"taxpayer"* includes under this division:

a. Every resident of the state of Iowa.

b. Every part-year resident of the state of Iowa.

c. Every estate and trust resident of this state whose income is in whole or in part subject to the state income tax.

d. Nonresident individuals, estates and trusts (those with a situs outside of Iowa) receiving taxable income from property in Iowa or from business, trade, or profession or occupation carried on in this state.

300.1(4) The term *"fiduciary"* shall mean one who acts in place of or for the benefit of another in accordance with the meaning of the term defined in Iowa Code section 422.4. The term includes, but is not limited to, the executor or administrator of an estate, a trustee, guardian or conservator, or a receiver.

300.1(5) The term *"employer"* means those who have a right to exercise control as to the performance of services as defined in Iowa Code section 422.4.

300.1(6) The term *"employee"* means and includes every individual who is a resident, or who is domiciled in Iowa, or any nonresident, or corporation performing services within the state of Iowa, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee. This includes officers of corporations, individuals, including elected officials performing services for the United States government or any agency or instrumentality thereof, or the state of Iowa, or any county, city, municipality or political subdivision thereof.

300.1(7) The term *"wages"* means any remuneration for services performed by an employee for an employer, including the cash value of all such remuneration paid in any medium or form other than cash. Wages have the same meaning as provided by the Internal Revenue Code as made applicable to Iowa income tax.

Wages subject to Iowa income tax withholding consist of all remuneration, whether in cash or other form, paid to an employee for services performed for the employer. For this purpose, the word "wages" includes all types of employee compensation, such as salaries, fees, bonuses, and commissions. It is immaterial whether payments are based on the hour, day, week, month, year or on a piecework or percentage plan.

Wages paid in any form other than money are measured by the fair market value of the goods, lodging, meals, or other consideration given in payment for services.

Where wages are paid in property other than money, the employer should make necessary arrangements to ensure that the tax is available for payment. Vacation allowances and back pay, including retroactive wage increases, are taxed as ordinary wages.

Tips or gratuities paid directly to an employee by a customer and not accounted for to the employer are not subject to withholding. However, the recipients must include them in their personal income tax returns.

Amounts paid specifically, either as advances or reimbursements, for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to these taxes. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowance are combined in a single payment.

Wages are to be considered as paid when they are actually paid or when they are constructively paid, that is, when they are credited to the account of, or set apart for the wage earner so that they may be drawn upon by the wage earner at any time, although not then actually reduced to possession.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

[Editorial change: IAC Supplement 11/2/22; **ARC 6904C**, IAB 2/22/23, effective 3/29/23]

701—300.2(422) Statute of limitations.

300.2(1) *Periods of audit.*

a. The department has three years after a return has been filed or three years after the return became due, including any extensions of time for filing, whichever time is the later, to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitations does not apply in the instances specified in paragraphs *"b," "c," "d," "e," "f"* and *"g."*

b. If a taxpayer fails to include in the taxpayer's return items of gross income as defined in the Internal Revenue Code as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed, or within six years after the return became due, including any extensions of time for filing, whichever time is the later.

c. If a taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

d. If a taxpayer fails to file a return, the periods of limitations so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

e. While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

f. In addition to the periods of limitation set forth in paragraph *"a," "b," "c," "d,"* or *"e,"* the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination, and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer. *Van Dyke v. Iowa Department of Revenue and Finance,* 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached to the notification shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa individual income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

g. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to

such prior year of a net operating loss or net capital loss, the period shall be the period of limitation for the taxable year of the net operating loss or net capital loss which results in such carryback.

300.2(2) *Waiver of statute of limitations.* When the taxpayer and the department enter into an agreement to extend the period of limitation, interest continues to accrue on any deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

300.2(3) *Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.* If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code section 422.25.
[Editorial change: IAC Supplement 11/2/22]

701—300.3(422) Retention of records.

300.3(1) Every individual subject to the tax imposed by Iowa Code section 422.5 (whether or not the individual incurs liability for the tax) and every withholding agent subject to the provisions of Iowa Code section 422.16 shall retain those books and records as required by Section 6001 of the Internal Revenue Code and federal income tax regulation 1.6001-1(e) including the federal income tax return and all supporting federal schedules. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

300.3(2) In addition, records relating to other deductions or additions to federal adjusted income and Iowa tax credits shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitations for audit specified in Iowa Code section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.
[**ARC 9104B**, IAB 9/22/10, effective 10/27/10; Editorial change: IAC Supplement 11/2/22]

701—300.4(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such deduction.

This rule is intended to implement Iowa Code sections 422.7 and 422.9.
[Editorial change: IAC Supplement 11/2/22]

701—300.5(422) Jeopardy assessments.

300.5(1) A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

300.5(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code section 422.30.
[Editorial change: IAC Supplement 11/2/22]

701—300.6(422) Information deemed confidential. Iowa Code sections 422.20 and 422.72 apply generally to the director, deputies, auditors, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information will be bound by the same rules of secrecy under these sections as

any member of the department and will be subject to the same penalties for violations as provided by law. See rule 701—5.8(17A).

This rule is intended to implement Iowa Code sections 422.16, 422.20, and 422.72.
[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—300.7 Reserved.

701—300.8(422) Delegations to audit and examine. Pursuant to statutory authority, the director delegates to authorized assistants and employees the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code section 422.70.
[Editorial change: IAC Supplement 11/2/22]

701—300.9(422) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond issued by a surety company authorized to conduct business in Iowa and approved by the insurance commissioner as to solvency and responsibility in an amount the director may fix, or in lieu of bond, securities approved by the director in an amount the director may prescribe and keep in the custody of the department. Pursuant to the statutory authorization in Iowa Code section 422.16, the director has determined that the following procedures will be instituted with regard to bonds. However, the bonding procedures were applicable only to nonresident employers or withholding agents for withholding taxes due prior to January 1, 1987. The penalty for failure of a withholding agent to file a bond, described in subrule 300.9(4) applies to taxes required to be withheld on or after January 1, 1990.

300.9(1) *When required.*

a. New applications by withholding agents. A new withholding agent applicant will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or (2) the new applicant held a withholding agent's identification number for a prior business and the remittance record of the tax under the prior identification number falls within one of the conditions in paragraph *"b"* below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior identification number.

b. Existing withholding agents. Existing withholding agents shall be requested to post a bond or security when they have had two or more delinquencies in remitting the withholding tax during the last 24 months if filing returns on a quarterly basis or have had four or more delinquencies during the last 24 months if filing returns on a monthly basis. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or the late payment of the tax will not count as a delinquency if the withholding agent can satisfy one of the conditions set forth in Iowa Code section 421.27.

c. Waiver of bond. If a withholding agent has been requested to post a bond or security or if a withholding agent applicant has been requested to post a bond or security, upon the filing of the bond or security, if the withholding agent maintains a good filing record for a period of two years, the withholding agent may request that the department waive the continued bond or security requirement.

300.9(2) *Type of security or bond.* When it is determined that a withholding agent or withholding agent applicant is required to post collateral to secure the collection of the withholding tax, the following types of collateral will be considered as sufficient: surety bonds, securities or certificates of deposit. When the withholding agent is a corporation, an officer or employee of the corporation may assume personal liability as security for the payment of the withholding tax. The officer or employee will be evaluated as provided in 300.9(1)*"a"* as if the officer or employee applied as the withholding agent as an individual.

300.9(3) *Amount of bond or security.* When it is determined that a withholding agent or withholding agent applicant is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the withholding agent or applicant

will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months' withholding tax liability will be required. If the applicant or withholding agent will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

300.9(4) *Penalty for failure of a withholding agent to file bond.* If the withholding agent is requested by the department to file a bond to secure collection of the state withholding tax and fails to file the bond, the withholding agent is subject to a penalty. The penalty for failure to file a bond is 15 percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty cannot exceed $5000.

This rule is intended to implement Iowa Code section 422.16.
[Editorial change: IAC Supplement 11/2/22]

701—300.10(422) Indexation. Iowa Code section 422.5 provides for the adjustment of the tax brackets by a cumulative inflation factor to be determined by the director. The requirement that provided that the state general fund balance on June 30 of the prior calendar year had to be $60 million or more before there was indexation of the tax rate brackets for the current year was repealed for tax years beginning on or after January 1, 1996.

This rule is intended to implement Iowa Code sections 422.4 and 422.21.
[**ARC 1303C**, IAB 2/5/14, effective 3/12/14; Editorial change: IAC Supplement 11/2/22]

701—300.11(422) Appeals of notices of assessment and notices of denial of taxpayer's refund claims. Rescinded **ARC 7192C**, IAB 12/13/23, effective 1/17/24.

701—300.12(422) Indexation of the optional standard deduction for inflation. Effective for tax years beginning on or after January 1, 1990, the optional standard deduction is indexed or increased by the cumulative standard deduction factor computed by the department of revenue. The cumulative standard deduction factor is the product of the annual standard deduction factor for the 1989 calendar year and all standard deduction factors for subsequent annual calendar years. The annual standard deduction factor is an index, to be determined by the department of revenue by October 15 of the calendar year, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in that calendar year preceding the calendar year for which the annual standard deduction factor is to apply. For tax years beginning on or after January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the United States Department of Commerce and shall add all of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. The annual standard deduction factor shall not be less than 100 percent.

This rule is intended to implement Iowa Code section 422.4.
[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; Editorial change: IAC Supplement 11/2/22]

701—300.13(422) Reciprocal tax agreements. Effective for tax years beginning on or after January 1, 2002, the department of revenue may, when the action has been approved by the general assembly and the governor, and when it is cost-efficient, administratively feasible, and of mutual benefit to Iowa and another state, enter into a reciprocal tax agreement with a tax administration agency of the other state. Under this agreement, income earned from personal services in Iowa by residents of the other state will be exempt from Iowa income tax if the other state provides an identical exemption from its state income tax for income earned in the other state from personal services by Iowa residents. For purposes of this rule, "income earned from personal services" includes wages, salaries, commissions, tips, deferred compensation, pensions, and annuities which were earned from personal services in Iowa by a resident of another state that had a reciprocal tax agreement with Iowa at the time the wages, salaries, commissions, tips, deferred compensation, pensions, or annuities were earned. See rule 701—302.45(422) for the treatment of deferred compensation, pensions, or annuities received by a nonresident of Iowa related to the documented retirement of a participant in a deferred compensation plan, a pensioner or an annuitant.

The provisions of rule 701—302.45(422) supersede the definition of "income earned from personal services" under any reciprocal agreement as it relates to deferred compensation, pensions, or annuities.

300.13(1) *Reciprocal tax agreement with Illinois.* Pursuant to the authority of Iowa Code subsection 422.8(5), the department of revenue entered into a reciprocal tax agreement with tax administration officials of Illinois in November 1972 which went into effect for taxable years which began after December 31, 1972. The Iowa-Illinois reciprocal tax agreement cannot be terminated by the Iowa department of revenue unless the termination is authorized by a constitutional majority of each house of the general assembly and is approved by the governor. The Iowa-Illinois reciprocal tax agreement includes the following terms:

a. No Illinois or Iowa employer is required to withhold Illinois income tax from compensation paid to an Iowa resident for personal services in Illinois.

b. No Illinois or Iowa employer is required to withhold Iowa income tax from compensation paid to an Illinois resident for personal services in Iowa.

c. Every Iowa employer who is subject to the jurisdiction of Illinois is liable to the state of Illinois for withholding of Illinois income tax from compensation paid to Illinois residents.

d. Every Illinois employer who is subject to the jurisdiction of Iowa is liable to the state of Iowa for the withholding of Iowa income tax from compensation paid to Iowa residents.

e. The Illinois department of revenue will encourage Illinois employers who are not subject to the jurisdiction of Iowa to withhold and remit Iowa income tax from wages paid to Iowa residents employed in Illinois.

f. The Iowa department of revenue will encourage Iowa employers who are not subject to the jurisdiction of Illinois to withhold and remit Illinois income tax from compensation paid to Illinois residents from employment in Iowa.

g. For purposes of the agreement, "compensation" means wages, salaries, commissions, tips, deferred compensation, pensions, and annuities and any other remuneration paid for personal services. In the case of deferred compensation, pensions, and annuities, those incomes are deemed to have been earned at the time of employment. Therefore, if an Illinois resident receives a pension or annuity from employment in Iowa at the time the reciprocal agreement was in effect, the pension or annuity income is not taxable to Iowa since it is "compensation" covered by the reciprocal agreement. See rule 701—302.45(422) for the treatment of deferred compensation, pensions, or annuities received by an Illinois resident related to the documented retirement of a participant in a deferred compensation plan, a pensioner or an annuitant. The provisions of rule 701—302.45(422) supersede the definition of "compensation" under the reciprocal agreement with Illinois. "Compensation" does not include unemployment compensation benefits which an Illinois resident receives due to employment in Iowa.

h. No Iowa resident is required to pay Illinois income tax or file an Illinois return from compensation paid from personal services in Illinois.

i. No Illinois resident is required to pay Iowa income tax or to file an Iowa return on compensation for personal services in Iowa.

j. For purposes of the agreement, the term "Iowa resident" means an individual who is a resident under the laws of the state of Iowa, and the term "Illinois resident" means an individual who is a resident as defined in the Illinois Income Tax Act.

300.13(2) *Reciprocal tax agreements with states other than Illinois.* The Iowa department of revenue has not entered into reciprocal tax agreements with any state except the state of Illinois. See subrule 300.13(1).

This rule is intended to implement Iowa Code section 422.8 as amended by 2002 Iowa Acts, House File 2116, and section 422.15.

[**ARC 1665C**, IAB 10/15/14, effective 11/19/14; Editorial change: IAC Supplement 11/2/22]

701—300.14(422) Information returns for reporting income payments to the department of revenue. Effective January 1, 1993, every person, every corporation, or agent of a person or corporation, lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any political subdivision of the state, having control, receipt, custody,

or disposal of any of the income items described in subrule 300.14(1), shall file information returns with the department of revenue by the last day of February following the end of the year in which the payments were made. For purposes of this rule, "every person" is every individual who is a resident of this state. For purposes of this rule, "every corporation" includes all corporations that have a place of business in this state.

300.14(1) *Incomes to be included in information returns.* The entities described in rule 701—300.14(422) are required to file information returns to the department of revenue on income payments of interest (other than interest coupons payable to the bearer), rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, unemployment compensation, royalties, patronage dividends, or other fixed or determinable annual or periodic gains, profits, and income to the extent that the amount of income is great enough so that an information return on the income is required to be filed with the Internal Revenue Service (IRS) under provisions of the Internal Revenue Code. However, no reporting is required for payments of deferred compensation, pensions, and annuities to nonresidents of Iowa. In addition, no reporting is required for any type of income payment where information on the income payment is available to the department from the Internal Revenue Service.

300.14(2) *Information on income payments available from the Internal Revenue Service.* The department can obtain information from the Internal Revenue Service on many income payments made to individuals in the tax year. The following is a list of federal reporting forms and the types of information available on those forms from the Internal Revenue Service for residents of Iowa:

a. 1065 K-1.

1. Dividends.
2. Interest.
3. Tax withheld.
4. Royalties.
5. Ordinary income or (loss).
6. Real estate income or (loss).
7. Other rental income or (loss).
8. Other portfolio income or (loss).
9. Guaranteed payments.

b. K-1 1041.

1. Dividends.
2. Interest.
3. Other taxable income or (loss).
4. Tax withheld.

c. K-1 1120-S.

1. Dividends.
2. Interest.
3. Tax withheld.
4. Royalties.
5. Ordinary income.
6. Real estate.
7. Other rental.
8. Other portfolio.

d. 1099-S.

1. Real estate sales.

e. 1099-B.

1. Aggregate profit and loss.
2. Realized profit and loss.

f. 1098.

1. Mortgage interest.

g. 1099-G.

1. Tax withheld.
2. Taxable grant.
3. Unemployment compensation.
4. Agricultural subsidies.

h. 1099-DIV.

1. Dividends.
2. Tax withheld.
3. Capital gains.
4. Cash liquid distribution.
5. Noncash liquid distribution.
6. Investment expense.
7. Ordinary dividends.

i. 1099-INT.

1. Interest.
2. Tax withheld.
3. Savings bonds.
4. Interest forfeiture.
5. Tax-exempt interest.

This rule is intended to implement Iowa Code section 422.15.
[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; Editorial change: IAC Supplement 11/2/22]

701—300.15(422) Relief from joint and several liability under Iowa Code section 422.21(7) for substantial understatement of tax attributable to nonrequesting spouse or former spouse. Married or formerly married taxpayers are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where the spouses file separately on the combined return. However, pursuant to Iowa Code section 422.21(7), a person who is eligible for relief under the criteria established in Section 6015 of the Internal Revenue Code may be relieved of liability for an understatement of Iowa tax that is attributable to erroneous items of the nonrequesting spouse or former spouse. For state income tax purposes, the requirements set forth in this rule shall control to the extent that they conflict with Section 6015 of the Internal Revenue Code.

300.15(1) *Filing status required for relief from joint and several liability.* For state income tax purposes, a married or formerly married taxpayer may qualify for relief from joint and several liability under Iowa Code section 422.21(7) only if the taxpayer filed a joint return or filed separately on a combined return.

300.15(2) *Scope of relief for Iowa income tax purposes.* An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. An erroneous item is any item resulting in an understatement or deficiency in Iowa taxes to the extent that the item is omitted from, or improperly reported or characterized on, an Iowa tax return, including Iowa deductions and tax credits that would not be included on a federal return.

300.15(3) *Requirement to provide IRS determination or other evidence of eligibility.*

a. If the person seeking relief from joint and several liability under Iowa Code section 422.21(7) also applied for tax relief from the federal government under Section 6015 of the Internal Revenue Code and received a final determination letter or other document issued by the Internal Revenue Service in connection with relief requested under Section 6015 of the Internal Revenue Code, the person is required to provide the department with a copy of such letter or document within the time frame set forth in subrule 300.15(6). Failure to provide this required information, if it exists, will result in the denial of the request for relief from joint and several liability under Iowa Code section 422.21(7).

b. If the person seeking relief from joint and several liability under Iowa Code section 422.21(7) also applied for federal relief under Section 6015 of the Internal Revenue Code but did not receive a final determination letter or other document issued by the Internal Revenue Service in connection with the requested relief, the person must provide the department with other evidence to support the position that the taxpayer is eligible for relief under Iowa Code section 422.21(7).

c. If the person seeking relief under Iowa Code section 422.21(7) did not apply for federal relief under Section 6015 of the Internal Revenue Code, the person must submit a written statement to the department detailing the reason for not applying for relief under Section 6015 of the Internal Revenue Code as well as evidence to support the position that the taxpayer is eligible for relief under Iowa Code section 422.21(7).

300.15(4) *Burden of proof; evaluation of criteria listed under Section 6015 of the Internal Revenue Code.* The burden is on the person seeking relief from joint and several liability to show that the person is eligible for relief under Iowa Code section 422.21(7). In determining whether the person seeking relief from joint and several liability is eligible for relief under Iowa Code section 422.21(7), the department shall apply this rule and the relevant criteria set forth in Section 6015 of the Internal Revenue Code and the related federal regulations.

300.15(5) *Protesting a denied request for relief from joint and several liability.* If the department denies a claim for relief from joint and several liability under Iowa Code section 422.21(7), the person seeking relief may protest the department's determination under 701—Chapter 7. The department will evaluate the protest by applying the criteria set forth in this rule and Section 6015 of the Internal Revenue Code and the related regulations. In protest proceedings, the burden is on the person seeking relief from joint and several liability to show that the person meets the criteria for relief under this rule and Section 6015 of the Internal Revenue Code.

300.15(6) *Time period for requesting relief from joint and several liability.* For tax periods beginning on or after January 1, 2004, relief from joint and several liability must be requested within two years after the date of the notice of assessment. However, an applicant who fails to meet this deadline may be granted equitable relief if the applicant satisfies the criteria listed under Section 6015(f) of the Internal Revenue Code and, if applicable, Internal Revenue Service Notice 2011-70, which became effective July 25, 2011.

300.15(7) *Notice to nonrequesting spouse or former spouse.* On or before 60 days from the date the person seeking relief from joint and several liability files a request with the department, the department may notify the nonrequesting spouse or former spouse of the request for relief. The notice will advise the nonrequesting spouse or former spouse of the right to intervene by filing a notice of intervention with the department in accordance with subrules 300.15(8) and 300.15(9). The notice shall not include the current address or contact information of the spouse or former spouse requesting relief. The department will use the last-known address of the nonrequesting spouse when sending the notice.

300.15(8) *Intervention by nonrequesting spouse or former spouse.* If the nonrequesting spouse or former spouse desires to intervene, such individual shall file a notice of intervention with the department not later than 60 days after the date the notice of the request for relief from joint and several liability is sent by the department to the nonrequesting spouse or former spouse, unless the department directs otherwise.

300.15(9) *Contents of notice of intervention.*

a. A notice of intervention must be in the following format:

DEPARTMENT OF REVENUE

Name of Intervenor	**NOTICE OF INTERVENTION**
Address of Intervenor	Docket No. _____

b. A notice of intervention must contain all of the following, where applicable and known to the intervenor:

(1) The name, address, telephone number, and identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or individual tax identification number (ITIN) of the person who is requesting intervention);

(2) The docket number of the proceeding initiated by the person seeking relief from joint and several liability under Iowa Code section 422.21(7);

(3) A copy of a determination letter or other document, if any, issued by the Internal Revenue Service showing that the person seeking relief from joint and several liability under Section 6015 of the Internal Revenue Code has been granted or denied relief for the relevant tax years;

(4) A clear and concise statement of the grounds for intervention, all relevant facts, and the reasons why the intervenor agrees or disagrees with the person seeking relief from joint and several liability as to that person's entitlement to such relief;

(5) A citation to any specific statutes, rules, policies, decisions, or orders which may be relevant in the department's determination of the applicability of relief from joint and several liability to the person seeking such relief;

(6) Any information known to the petitioner relating to the department's treatment of similar cases; and

(7) The signature of the intervenor at the conclusion of the notice of intervention attesting to the accuracy and truthfulness of the information set forth in the notice of intervention.

This rule is intended to implement Iowa Code section 422.21 as amended by 2020 Iowa Acts, House File 2641.

[**ARC 1303C**, IAB 2/5/14, effective 3/12/14; **ARC 2393C**, IAB 2/3/16, effective 3/9/16; **ARC 5801C**, IAB 7/28/21, effective 9/1/21; Editorial change: IAC Supplement 11/2/22]

701—300.16(422) Preparation of taxpayers' returns by department employees. A department employee can assist a taxpayer in the preparation and completion of the taxpayer's individual income tax returns and other state tax returns during the employee's hours of employment for the department in either of the following situations:

1. At the time the department employee is conducting an audit of the taxpayer.
2. When the department employee is requested to prepare a taxpayer's individual income tax return or other tax returns by the taxpayer, the taxpayer's spouse, or the taxpayer's authorized representative.

This rule is intended to implement Iowa Code section 421.17.

[Editorial change: IAC Supplement 11/2/22]

701—300.17(422) Resident determination. For Iowa individual income tax purposes, an individual is a "resident" if: (1) the individual maintains a permanent place of abode within the state, or (2) the individual is domiciled in the state. An individual who is determined to be a "resident" of Iowa is subject to Iowa income tax on all the individual's income for the taxable year, no matter whether the income is earned within Iowa or outside of Iowa, except when an item of income is specifically exempted from taxation by a provision of federal or Iowa law.

300.17(1) *Permanent place of abode.* The establishment of a permanent place of abode requires the maintenance of a place of abode over a sufficient period of time to create a well-settled physical connection with a given locality. Significant factors, among others, to be considered in determining whether an individual maintains such a permanent place of abode are: (1) the amount of time the individual spends in the locality; (2) the nature of the individual's place of abode; (3) the individual's activities in the locality; and (4) the individual's intentions with regard to the length and nature of the individual's stay.

There is a rebuttable presumption that an individual is maintaining a "permanent place of abode" if the individual maintains a place of abode within this state and spends more than 183 days of the tax year within this state. The term "place of abode" includes a house, apartment, condominium, mobile home, or other dwelling place maintained or occupied by the individual whether or not owned or rented by the individual. Situations where presence in the state for 183 days of the tax year may not cause an individual to be considered to be maintaining a "permanent place of abode" would include situations where presence in the state is not voluntary, such as confinement to a correctional facility or an extended hospital stay.

300.17(2) *Domicile.* An individual is "domiciled" in this state if the individual intends to permanently or indefinitely reside in Iowa and intends to return to Iowa whenever the individual may be absent from this state. Individuals who have moved into this state are domiciled in Iowa if the following three elements exist: (1) a definite abandonment of a former domicile; (2) actual removal to, and physical presence in this state; and (3) a bona fide intention to change domicile and to remain in this state permanently or indefinitely. *Julson v. Julson,* 255 Iowa 301, 122 N.W.2d 329, 331 (1963).

Every person has one and only one domicile. Domicile, for purposes of determining when an individual is "domiciled in this state," is largely a matter of intention which must be freely and voluntarily exercised. The intention to change one's domicile must be present and fixed and not

dependent upon the happening of some future or contingent event. Because it is essentially a matter of intent, precedents are of slight assistance and the determination of the place of domicile depends upon all the facts and circumstances in each case.

Once an individual is domiciled in Iowa, that status is retained until such time as the individual takes positive action to become domiciled in another state or country, relinquishes the rights and privileges of residency in Iowa, and meets the criteria set forth from *Julson v. Julson,* 255 Iowa 301, 122 N.W.2d, 329, 331 (1963). The director may require an individual claiming domicile outside the state of Iowa to provide documentation supporting establishment of another domicile. Absence from the state for 183 days of the tax year or for any other extended period of time does not alone show abandonment of an Iowa domicile.

a. There is a rebuttable presumption that an individual is domiciled in Iowa if the individual meets the following factors:

(1) Maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the tax year, and either

(2) Claims a homestead credit or military tax exemption on a home in Iowa, or

(3) Is registered to vote in Iowa, or

(4) Maintains an Iowa driver's license, or

(5) Does not reside in an abode in any other state for more days of the tax year than the individual resides in Iowa.

b. There is a rebuttable presumption that an individual is not domiciled in Iowa if the individual meets all of the following factors:

(1) Does not claim a homestead credit or military exemption on a home in Iowa,

(2) Is not registered to vote in Iowa,

(3) Does not maintain an Iowa driver's license,

(4) Is in Iowa less than 183 days of the tax year; and

(5) The individual maintains a place of abode outside of Iowa where the individual resides for at least 183 days of the tax year.

c. In addition to the factors listed for the above rebuttable presumptions for "permanent place of abode" or "domicile," some of the nonexclusive factors to consider in determining whether an individual is a resident of Iowa are as follows:

(1) Maintains a place of abode in Iowa, whether owned, rented, or occupied.

(2) Maintains an Iowa driver's license.

(3) Maintains active membership in an Iowa church, club, or professional organization and participates as a result of such membership.

(4) Documents, such as tax forms, legal documents, and correspondence, initiated during tax periods, use an Iowa address. Legal documents could include wills, deeds, or other contracts.

(5) Immediate family members residing in Iowa who are claimed as dependents or rely, in whole or in part, on the taxpayer for their support.

(6) Vehicles registered in Iowa.

(7) Location of employment or active participation in a business within Iowa.

(8) Active checking or savings accounts or use of safe deposit boxes located in Iowa.

(9) Claims a benefit on the federal income tax return based upon an Iowa home being the principal place of residence. Examples include mortgage interest on principal residence and travel expenses while away from the principal place of residence.

(10) Receives a number of services in Iowa from doctors, dentists, attorneys, CPAs or other professionals.

Unless shown to the contrary, married persons are presumed to have the same residence. Ordinarily, the residence of a minor is that of the person who has permanent custody over the minor.

An individual may qualify as a part-year resident of Iowa by: (1) not maintaining a permanent place of abode; and (2) not having a domicile in Iowa for the entire tax year. In determining part-year resident status, whether an individual is in or out of Iowa for 183 days may not be a factor.

300.17(3) *Resident determination for individuals on active duty military service.* The Soldiers and Sailors Civil Relief Act provides in 50 U.S.C. Appx § 574(1) that members of the armed forces of the United States shall not be deemed to have lost a residence or domicile in any state, solely by being absent from that state in compliance with military or naval orders, or to have acquired a residence or domicile in another state while being absent from the state of residence. Thus, residents of Iowa who enter military service will retain their Iowa residence during the tenure of their military service or until they take positive action to change their state of residence.

For tax years beginning prior to January 1, 2011, residents of Iowa in military service will have Iowa income tax withheld from their military pay except when the military pay is earned in a combat zone and is totally or partially exempt from both federal and state income tax. An Iowa resident in military service can change state of residence for purposes of withholding of state income tax by completing Form DD2058 and designating a state other than Iowa as the individual's new state of residence. The military payroll officer of the service person will accept the DD2058 form and stop withholding Iowa income tax from the service person's military pay and start withholding the state income tax of the state of new residence of the service person (assuming the new state of residence has an income tax and assuming the new state of residence requires withholding of income tax from wage payments to its residents in military service). However, the completion of the DD2058 form by the "former Iowa resident" will not be considered as a valid change of residence for Iowa income tax purposes unless the service person was physically residing in the new state of residence at the time the DD2058 form was completed and the service person took other actions to show intent to change state of residence. Other actions to show intent to change state of residence would include: (1) registering to vote in the new state; (2) purchasing real property in the new state; (3) titling and registering vehicles in the new state; (4) notifying the state of previous residence of the state of residence change; (5) preparing a new last will and testament which indicates the new residence; and (6) complying with the tax laws of the state of new residence. For tax years beginning on or after January 1, 2011, see rule 701—302.76(422) regarding the exemption of active duty pay for both resident and nonresident members of the armed forces, armed forces military reserve, or the national guard.

Military personnel who are residents of other states and who come to Iowa as a result of military or naval orders, but who later decide to become legal or actual residents of Iowa, or military personnel who purchase residential property in Iowa and claim homestead credits or the military exemption for the property for property tax purposes are presumed to be residents of Iowa for income tax purposes.

Military personnel who are not residents of the state of Iowa and who receive military pay for service in Iowa shall not be considered to have received this income for services performed within Iowa or from sources within Iowa. These nonresidents of Iowa will be taxable on nonmilitary wages for personal services in Iowa they receive while stationed in Iowa. These individuals will also be taxable to Iowa on incomes they receive from businesses, trades, professions, or occupations operated in Iowa during the time they are stationed in Iowa as well as on nonmilitary incomes from any other sources within Iowa.

Since military nonresidents of Iowa cannot be taxed on their military pay while they are stationed in Iowa, the military pay cannot be considered for purposes of Iowa's taxation of nonresidents in accordance with the Servicemembers Civil Relief Act, Public Law 108-189. The military pay of the nonresident of Iowa must be excluded from the computation of the nonresident credit set forth in rule 701—304.5(422). This exclusion from the computation of the nonresident credit applies to military pay of nonresident servicemembers who are in an active duty status as defined under Title 10 of the United States Code.

For tax years beginning before January 1, 2009, spouses of military personnel who earn wages and other incomes from Iowa sources are taxed on these incomes similarly to other nonresidents of Iowa. Spouses of Iowa resident military personnel who were nonresidents of Iowa at the time of the marriages with the Iowa residents will not be considered to be residents of Iowa until they actually reside in Iowa with their husbands or wives. For tax years beginning on or after January 1, 2009, spouses who earn wages from Iowa sources are not subject to Iowa income tax on these wages if one spouse who is present in Iowa is a member of the armed forces, the other spouse is present in Iowa solely to be with the military spouse, and the spouse who is a member of the armed forces maintains a domicile in another state.

This treatment for tax years beginning on or after January 1, 2009, is required by the Military Spouses Residency Relief Act, Public Law No. 111-97.

300.17(4) *Examples of resident determination.*

a. Fred and Mary were domiciled in Iowa when Fred retired in 1994. They have a house in Iowa and a condominium in Florida. Prior to 1994, Fred and Mary spent approximately four months in Florida and the remaining eight months in Iowa. Fred owned a small business when he retired and was retained as a consultant and remained a member of the board of directors after retirement. Fred and Mary have friends and family in both Iowa and Florida. They are also involved in the activities of the local country club as well as other civic and service organizations in both locations. When Fred retired, he and Mary decided to spend more time in Florida, especially during the winter months. They usually leave for Florida in late October and return to Iowa in early April. They have transferred their automobile registrations to Florida and they have acquired Florida driver's licenses. They have registered to vote in Florida and have voted in Florida elections. They visit doctors and dentists in both locations as the need arises. They maintain bank accounts in both locations and have mail sent to the location at which they are physically residing. Fred and Mary usually return to Iowa for the Thanksgiving and Christmas holidays and Fred returns once a month to attend board meetings. They do not claim a homestead credit or military tax exemption on their Iowa home, but they do use their Iowa address on most of their legal documents and on their federal tax return. They also travel and vacation during the winter months and oftentimes leave Florida to vacation.

Fred and Mary would be considered Iowa residents because they have retained a permanent abode in Iowa.

b. Susan takes an apartment in Des Moines when her employer assigns her to the region office of a large accounting firm for a temporary period. She spends more than 183 days in Iowa, but she returns to her apartment in Ohio once a month to visit her friends and to check her mail. She intends to return to Ohio when her assignment in Des Moines is terminated. She has retained her Ohio driver's license and she is registered to vote in Ohio.

Susan would not be considered to be an Iowa resident because she has not established a "permanent" place of abode in Iowa, even though she is present in Iowa for more than 183 days. Also, she has not had a definite abandonment of her former domicile. Susan would be taxed on her Iowa income as a nonresident. However, if Susan was assigned to Des Moines on a permanent basis, she may be considered an Iowa resident even though she retains her apartment in Ohio.

c. John is an over-the-road truck driver and his job takes him out of Iowa for approximately 240 days a year. He is married and his wife, Mary, lives in Marshalltown, Iowa. His two school-age children attend school in that community and Mary also has a part-time job as a nurse for the neighborhood clinic. John gets home for most weekends and for the holidays. He is registered to vote in Iowa and utilizes the Iowa homestead and military tax exemptions. He does not own any other real property except a lakeside cabin in Minnesota, where the family vacations during the summer.

John would be considered an Iowa resident even though he is not present in the state for more than 183 days because John intends to return to Iowa whenever he is absent and has not taken any steps to establish residency in any other state.

d. Wilber, who is a resident of Idaho, has a heart attack while vacationing in Iowa. He is hospitalized in the University Hospitals in Iowa City. While there, the doctors also discover that he has a rare blood disorder and Wilber is confined to the hospital for nearly nine months, during which time he receives treatment.

Wilber's presence in Iowa is for a medical emergency. When an individual suffers a medical emergency while present in this state for other purposes and cannot be realistically moved from the state or in situations where an individual is confined to an institution as a result of seeking treatment, the time spent in Iowa would not count toward the 183-day rule. Also, Wilber's hospital room would not be considered a permanent place of abode.

e. Chuck and Linda both worked for a major manufacturing company in Iowa and both of them decided to take advantage of an early retirement package offered by their employer. They do not have any children, but Chuck has a brother who lives in Davenport, Iowa, and Linda has a sister who lives

in Phoenix, Arizona. After retirement, Chuck and Linda sell their house and purchase a motor home. They spend their time traveling the United States and Canada. They do not have a place of abode in any state as they live in their new vehicle. They do not spend more than 183 days in any state during the year. They retained their Iowa driver's licenses and their motor home is registered in Iowa. They also have bank accounts in both Iowa and Arizona, and they have their mail sent to Chuck's brother as well as Linda's sister. They show Iowa as their state of residence for federal income tax purposes. They are not registered to vote in any state.

Chuck and Linda would be considered residents of Iowa. They have not shown an intention to change domicile and remain in another state permanently or indefinitely.

This rule is effective for tax years beginning on or after January 1, 1995.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9103B**, IAB 9/22/10, effective 10/27/10; **ARC 9822B**, IAB 11/2/11, effective 12/7/11; **ARC 1303C**, IAB 2/5/14, effective 3/12/14; Editorial change: IAC Supplement 11/2/22]

701—300.18(422) Tax treatment of income repaid in current tax year which had been reported on prior Iowa individual income tax return. For tax years beginning on or after January 1, 1992, if a taxpayer repays in the current tax year an amount of income that had been reported on the taxpayer's Iowa individual income tax return for a prior year that had been filed with the department and the taxpayer would have been eligible for a tax benefit under similar circumstances under Section 1341 of the Internal Revenue Code, the taxpayer will be eligible for a tax benefit on the Iowa return for the current tax year. The tax benefit will be either the reduced tax on the Iowa return for the current tax year due to the deduction of the repaid income or the reduction in tax on the Iowa return or returns for the prior year(s) due to the exclusion of the repaid income. The reduction in tax from the return for the prior year may be claimed as a refundable credit on the return for the current tax year.

EXAMPLE A: A taxpayer reported $7,000 in unemployment benefits on the taxpayer's 1994 Iowa return that the taxpayer had received in 1994. In early 1995 the taxpayer was notified that $4,000 of the unemployment benefits had to be repaid. The benefits were repaid by the end of 1995. The taxpayer claimed a deduction on the 1995 Iowa return for the amount of unemployment benefits repaid during 1995 which had been reported on the taxpayer's 1994 Iowa return as that action gave the taxpayer a greater reduction in Iowa income tax liability than the taxpayer would have received from a reduction in tax on the 1994 return by recomputing the liability by excluding the repaid income.

EXAMPLE B: A taxpayer had received a $5,000 bonus in 1994 which was reported on the taxpayer's 1994 Iowa return. In 1995 the taxpayer's employer advised the employee that the bonus was awarded in error and to be repaid. The $5,000 bonus was repaid to the employer by the end of 1995. The taxpayer claimed a credit of $440 on the 1995 Iowa return for repayment of the bonus in 1995. This represented the reduction in tax for 1994 from recomputing the tax liability for that year without the $5,000 bonus. This provided the taxpayer a greater tax benefit than the taxpayer would have received from claiming a deduction on the 1995 Iowa return from repayment of the bonus.

This rule is intended to implement Iowa Code section 422.5 as amended by 1996 Iowa Acts, Senate File 2168.

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◊ Two or more ARCs

CHAPTER 305
ASSESSMENTS AND REFUNDS

[Prior to 12/17/86, Revenue Department[730]]
[Prior to 11/2/22, see Revenue Department[701] Ch 43]

701—305.1(422) Notice of discrepancies.

305.1(1) *Notice of adjustments.* A department employee designated by the director to examine returns and make audits who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due is authorized to notify the taxpayer of this discovery by ordinary mail. The notice shall not be termed an assessment, and it may inform the taxpayer what amount would be due if the information discovered is correct.

305.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should then file a claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the agent, auditor, clerk or employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which the taxpayer considers relevant to the situation. Documents and records supporting the taxpayer's position may be required.

This rule is intended to implement Iowa Code sections 422.25 and 422.30.

[Editorial change: IAC Supplement 11/2/22]

701—305.2(422) Notice of assessment, supplemental assessments and refund adjustments. If after following the procedure outlined in subrule 305.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment without compliance with subrule 305.1(2) or a jeopardy assessment may be issued. All notices of assessment shall bear the signature of the director.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (under rule 701—7.9(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

This rule is intended to implement Iowa Code sections 422.25 and 422.30.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—305.3(422) Overpayments of tax. The following are provisions for refunding or crediting to the taxpayer's deposits or payments for tax in excess of amounts legally due.

305.3(1) *Claims for refund.* A claim for refund is a formal request made by the taxpayer or the taxpayer's personal representative to the department of revenue for repayment of state income tax that was paid with the taxpayer's previously filed individual income tax return. In order for a claim for refund to be considered to be a valid document, the taxpayer or the taxpayer's personal representative must file the claim on an IA 1040X Amended Return Form or on an IA 1040 Income Tax Return Form for the appropriate tax year, with the notation "Amended for Refund" clearly shown on the face of the return form. The taxpayer or the taxpayer's personal representative must file the claim for refund with the department under separate cover so the claim is not filed with another tax return or with other documents or forms submitted to the department.

In addition, the claim for refund must be filed within one of the time periods specified in Iowa Code section 422.73(1) in order for the refund claim to be timely so that the claim may be considered on its merits by the department.

If the department determines that the taxpayer's claim is without merit and the claim for refund should be rejected, the department will notify the taxpayer or the taxpayer's personal representative by mail that the claim for refund has been rejected and of the reason for rejection. In addition, the rejection letter will advise the taxpayer that the taxpayer has 60 days from the date of the letter to file a protest of the department's rejection of the claim for refund. The taxpayer's appeal of the rejection of the claim for refund must be filed in accordance with rule 701—7.9(17A).

305.3(2) *Offsetting refunds.* A taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department, may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

305.3(3) *Setoffs of qualifying debts administered by the department of administrative services.* Before any refund or rebate from a taxpayer's individual income tax return is considered for purposes of setoff, the refund or rebate must be applied first to any outstanding tax liability of that taxpayer with the department of revenue. After all outstanding tax liabilities are satisfied, any remaining balance of refund or rebate will be set off against any debt of the taxpayer, setoff of which is overseen by the department of administrative services pursuant to 2003 Iowa Acts, House File 534, section 86.

305.3(4) and **305.3(5)** Reserved.

305.3(6) *Overpayment credited to estimated tax.* Any remaining balance of overpayment, at the election of the taxpayer, will be refunded to the taxpayer or credited as a first payment of the taxpayer's estimated tax for the following year. However, a taxpayer may elect to credit an overpayment from a return to the estimated tax for the following tax year only in cases when the return is filed in the same calendar year that the return is due. For example, a taxpayer's 1994 return is due on April 30, 1995. If the taxpayer files that return on or before December 31, 1995, the taxpayer can elect to credit an overpayment on that return to estimated tax for 1995, and this election will be honored by the department. See also rule 701—308.7(422).

If an overpayment of income tax is shown as a credit to estimated tax for the succeeding taxable year, the amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund of the overpayment shall be allowed on the return where the overpayment arose.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may properly be assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year, the election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

305.3(7) Reserved.

305.3(8) *Refunds—statute of limitations for tax years ending on or after January 1, 1979.* The statute of limitations with respect to which refunds or credit may be claimed are:

a. The later of

(1) Three years after due date of payment upon which refund or credit is claimed; or

(2) One year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax matter with respect to the particular tax year. The taxpayer, however, must have notified the department of the matter within six months after the specified three-year period, contained in paragraph *"a,"* subparagraph (1), above. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund is limited to those matters between the taxpayer and the Internal Revenue Service which

affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in subparagraph 305.3(8)*"a"*(1) above of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W. 2d 113 (Iowa 1987).

d. Three years after the date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

305.3(9) to **305.3(14)** Reserved.

305.3(15) *Refunds—statute of limitations for taxpayers who paid 90 percent of the tax by the due date and filed the original return in the six-month extended period.* If a taxpayer has paid 90 percent of the income tax required to be shown due by the original due date of the return and has filed the original income tax return sometime in the six-month extended period after the original due date, the taxpayer may file an amended return by October 31 of the third year following the year the original return was due and shall be within the statute of limitations for refund. This position is supported by the Iowa Supreme Court in *Conoco, Inc. v. Iowa Department of Revenue and Finance,* 477 N.W.2d 377 (Iowa 1991). See also 701—subrule 301.2(4) which pertains to the extended period for filing the Iowa income tax return when 90 percent of the tax is paid by the original due date of the Iowa income tax return.

EXAMPLE 1. Joe Barnes had paid at least 90 percent of the tax shown due on his 1999 Iowa income tax return by the April 30 original due date and filed his original 1999 Iowa return on May 15, 2000. Mr. Barnes determined that he had failed to claim several deductions on the original 1999 Iowa return, so he filed an amended 1999 return on October 31, 2003. The amended return was filed within the three-year statute of limitations for refund since it was filed within three years of the extended due date of the return, October 31, 2000. The six-month extended due date applied in this case because the original return was filed within the six-month extended period.

EXAMPLE 2. Fred Jones paid 90 percent of the tax shown due on his 1999 return by the April 30 original due date and filed the original return on or before the April 30, 2000, original due date for this return. Mr. Jones determined that when he filed the original 1999 Iowa return, he failed to claim the Iowa income tax withheld from a part-time job he held in 1999. Mr. Jones filed an amended 1999 Iowa return on May 15, 2003, to claim the Iowa tax withheld that he had failed to claim on the original return. This amended return was rejected by the department because it was not filed within three years of the due date of the return. Although Mr. Jones had paid 90 percent of the tax by the due date, the due date was not extended because the original return had been filed by the due date of April 30, 2000.

This rule is intended to implement Iowa Code sections 421.17, 422.2 and 422.16 and section 422.73 as amended by 2012 Iowa Acts, Senate File 2328.

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701—305.4(422) Optional designations of funds by taxpayer.

305.4(1) *Iowa fish and game protection fund.*

a. A taxpayer filing an individual income tax return may designate a checkoff of $1 or more to be donated to the Iowa fish and game protection fund. If the overpayment shown on the return or the payment remitted with the return is insufficient to pay the amount designated to the Iowa fish and game protection fund, the amount credited to the fund will be reduced accordingly. The designation to the fund is irrevocable and cannot be made on an amended return.

EXAMPLE A: Overpayment as shown on the return is $50. $25 is designated to the fund. Due to an error on the return, only $20 is an overpayment. The taxpayer would not receive any refund, and all $20 of the overpayment would be credited to the fund.

EXAMPLE B: Overpayment as shown on the return is $50. $25 is designated to the fund. Due to an error on the return, no overpayment occurred, but instead the taxpayer owes $20. No money would be credited to the fund.

EXAMPLE C: Amount shown due on the return is $30. $20 is designated to the fund. A $50 payment was made with the return. Due to an error on the return, the taxpayer owes $40. Only $10 would be credited to the fund.

b. A designation to the Iowa fish and game protection fund may be allowed only after the taxpayer's obligations to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, and other state agencies are satisfied.

c. On or before January 31 of the year following each year in which returns with the Iowa fish and game protection fund checkoff are due, the department of revenue shall certify the amount designated to the Iowa fish and game protection fund and report this amount to the state treasurer.

305.4(2) *State fair foundation fund checkoff.*

a. A taxpayer filing an individual income tax return may designate a checkoff of $1 or more to be donated to the foundation fund of the Iowa state fair foundation. If the overpayment shown on the return or the payment remitted with the return is insufficient to pay the amount designated to the foundation fund, the amount credited to the foundation fund will be reduced accordingly. The designation to the foundation fund is irrevocable and cannot be made on an amended return.

b. A designation to the Iowa state fair foundation fund may be allowed only after the taxpayer's obligations to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, and the Iowa fish and game protection fund checkoff are satisfied.

c. On or before January 31 of the year following each year in which returns with the Iowa state fair foundation fund checkoff are due, the department of revenue shall transfer the total amount designated to the Iowa state fair foundation fund.

305.4(3) *Child abuse prevention program fund checkoff.*

a. A taxpayer filing an individual income tax return may designate a checkoff of $1 or more to be donated to the child abuse prevention program fund. If the overpayment shown on the return or the payment remitted with the return is insufficient to pay the amount designated by the taxpayer to the child abuse prevention program fund, the amount credited to the child abuse prevention program fund will be reduced accordingly. The designation to the child abuse prevention program fund is irrevocable and cannot be made on an amended return.

b. A designation to the child abuse prevention program fund may be allowed only after the taxpayer's obligations to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa fish and game protection fund checkoff, and the state fair foundation fund checkoff are satisfied.

c. On or before January 31 of the year following each year in which returns with the child abuse prevention program fund checkoff are due, the department of revenue shall transfer the total amount designated to the child abuse prevention program fund.

305.4(4) *Joint veterans trust fund and volunteer fire fighter preparedness fund checkoff.*

a. A taxpayer filing an individual income tax return may designate a checkoff of $1 or more to be donated jointly to the veterans trust fund and volunteer fire fighter preparedness fund. If the overpayment shown on the return or the payment remitted with the return is insufficient to pay the amount designated by the taxpayer to the veterans trust fund and volunteer fire fighter preparedness fund, the amount credited

to the veterans trust fund and volunteer fire fighter preparedness fund will be reduced accordingly. The designation to the veterans trust fund and volunteer fire fighter preparedness fund is irrevocable and cannot be made on an amended return.

b. A designation to the veterans trust fund and volunteer fire fighter preparedness fund checkoff may be allowed only after the taxpayer's obligations to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa fish and game protection fund checkoff, the state fair foundation fund checkoff, and the child abuse prevention program fund checkoff are satisfied.

c. On or before January 31 of the year following each year in which returns with the veterans trust fund and volunteer fire fighter preparedness fund checkoff are due, the department of revenue shall transfer one-half of the total amount designated to the veterans trust fund and the remaining one-half to the volunteer fire fighter preparedness fund.

305.4(5) *Limitation of checkoffs on the individual income tax return.*

a. Only four checkoffs may be included on the individual income tax return for a given tax year. For tax years beginning on or after January 1, 2017, if the same four checkoffs have been listed on the individual income tax return for two consecutive years, the two checkoffs that, in the aggregate, have received the lowest contribution amounts are repealed effective December 31 after the end of the second tax year and will be removed from the individual income tax return. To determine contribution amounts, the department will consider the contributions made to each fund for the first tax year and contributions made to each fund up to and including March 15 after the end of the second tax year. The department will notify the Iowa Code editor of the checkoffs that are repealed under this paragraph by July 1 after the end of the second tax year.

EXAMPLE: Checkoffs A, B, C, and D are included on the individual income tax return for tax years 2021 and 2022. Taxpayers will begin filing their 2021 tax returns in January 2022. To determine which two checkoffs received the lowest contribution amounts, the department will review the contributions received in the period January 1, 2022, through March 15, 2023 (March 15 after the end of the second tax year).

b. If the general assembly, in the same legislative session, enacts more checkoffs than may be included on the individual income tax form, only the earliest enacted checkoffs will be listed on the form. The department will determine which enacted checkoffs will be included on the form pursuant to Iowa Code section 3.7. If it is indeterminable which checkoffs were first enacted under Iowa Code section 3.7, the director of revenue shall determine the checkoffs that will be included on the individual income tax form. The department will notify the Iowa Code editor of any checkoffs that must be repealed under this paragraph by September 1 of any applicable year.

This rule is intended to implement Iowa Code sections 422.12D, 422.12E, 422.12H, 422.12K and 422.12L; 2016 Iowa Acts, House File 2459; 2017 Iowa Acts, House File 242; 2019 Iowa Acts, House File 779; and 2021 Iowa Acts, Senate File 619.

[**ARC 9103B**, IAB 9/22/10, effective 10/27/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0337C**, IAB 9/19/12, effective 10/24/12; **ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 3527C**, IAB 12/20/17, effective 1/24/18; **ARC 6148C**, IAB 1/12/22, effective 2/16/22; Editorial change: IAC Supplement 11/2/22]

701—305.5(422) Abatement of tax. Rescinded **ARC 7192C**, IAB 12/13/23, effective 1/17/24.

701—305.6 and **305.7** Reserved.

701—305.8(422) Livestock production credit refunds for corporate taxpayers and individual taxpayers. For tax years beginning on or after January 1, 1996, corporate and individual taxpayers who own certain livestock, who have livestock production operations in Iowa in the tax year, and who meet certain qualifications are eligible for a livestock production credit refund. The amount of a livestock production credit refund is determined by adding together for each head of livestock in the taxpayer's operation the product of 10 cents for each corn equivalent deemed to have been consumed

by that animal in the taxpayer's operation in the tax year. For tax years beginning on or after January 1, 1998, only qualified taxpayers that have cow-calf livestock operations described in paragraph *"o"* of subrule 305.8(2) will be eligible for the livestock production refunds, notwithstanding the other types of livestock operations mentioned in this rule. Note that the livestock production credit refund is also available to taxpayers who meet the qualifications described in subrule 305.8(1) and operate certain types of poultry operations in this state and own the poultry in the operations. The amounts of the livestock production credit refunds for these taxpayers are determined on the basis of 10 cents for each corn equivalent deemed to have been consumed by the chickens or the turkeys in the taxpayers' poultry operations in the tax year. However, the amount of livestock production credit refund may not exceed $3,000 per livestock or poultry operation for a tax year. In addition, the amount of livestock production credit refund per taxpayer for a tax year may not exceed $3,000. Therefore, if a particular taxpayer is involved in a cow-calf beef operation, a sheep-ewe flock operation, and a farrow-to-finish hog operation, the maximum livestock production credit refund for this taxpayer may not exceed $3,000.

General references in this rule to livestock, livestock production, and livestock production operations also apply to poultry, poultry production, and poultry production operations.

In the case of married taxpayers, each of the spouses may be eligible for a livestock production refund of up to $3,000 if each of the spouses was involved in a livestock production operation independently from the other spouse and independently from other taxpayers in the tax year. If both spouses are involved in the same livestock operation, the maximum refund from that operation is $3,000 which may be allocated between the individuals in the ratio of each spouse's ownership interest in the operation. If a livestock production operation is conducted by a partnership, limited liability company, subchapter S corporation, estate, or a trust, the livestock production credit refund from the entity is to be allocated to the owners of the entity in the same ratio as earnings are allocated to the owners. In situations where a livestock production operation is conducted partly within and partly without Iowa, only the livestock production activity in Iowa during the tax year will be considered for purposes of the livestock credit refund. The livestock production refund amounts for these taxpayers is to be allocated on the basis of sales of Iowa livestock which qualify taxpayers for the livestock production refund to total sales of livestock which qualify taxpayers for the refund. However, the refunds from any operations may not exceed $3,000. The following subrules outline how the livestock production credit refund program is to be administered by the department of revenue:

305.8(1) *Qualifications for the livestock production credit refunds.* For tax years beginning on or after January 1, 1997, individual and corporate taxpayers will be eligible for the livestock production credit refund if the taxpayer's federal taxable income is $99,600 or less. In the case of married taxpayers, their combined federal taxable income must be considered to determine if they are eligible for the credit.

For each tax year beginning after 1997, the federal taxable income specified previously in this subrule shall be multiplied by the cumulative index factor for that tax year to calculate the federal taxable income that will be used to determine whether a taxpayer is eligible for the livestock production refund that is authorized for that tax year. "Cumulative index factor" means the product of the annual index factor for the 1997 calendar year and all annual index factors for subsequent calendar years. The annual index factor equals the annual inflation factor for that calendar year as computed in Iowa Code section 422.4 for purposes of indexation of the tax rates for individual income tax.

305.8(2) *Definitions related to the livestock production credit refunds.* The following definitions explain livestock and poultry for purposes of this rule. The definitions also describe the various types of livestock operations of taxpayers which may qualify the taxpayers for the livestock production credit refunds and specify how the refunds are to be computed for the various types of livestock operations:

a. For the purposes of this rule, the term "livestock" means domestic bovine animals which will be referred to as bulls, heifers, cattle, calves, or cows in this rule, domestic ovine animals which will be referred to as sheep, lambs, rams, or ewes, or domestic swine which will be referred to as hogs or pigs. That is, for purposes of this rule, "livestock" includes only those farm animals which may qualify their owners for the livestock production credit refund. "Livestock" does not include horses, goats, donkeys, mules, oxen, furbearing mammals, other mammals, or other classes of animals, although some of these animals or species may be considered to be "livestock" in other contexts or situations.

b. For purposes of this rule the term "poultry" means only domestic chickens and domestic turkeys as only these types of birds may qualify their owners for the livestock production credit refunds. "Poultry" does not include ducks, geese, wild turkeys, emus, ostriches, or other fowl or birds, although some of these species may be considered to be poultry in other contexts or situations.

c. For purposes of this rule, the term "farrow-to-finish" hog operations comprises those hog production operations where the majority of the hogs sold from the operation are from animals farrowed and raised in the operation which are sold at a prime market weight of 200 pounds or more.

In order to compute the livestock production credit refund amounts for the "farrow-to-finish" hog production operations, the corn equivalent factor of 13 per animal sold, or $1.30, is multiplied by the number of hogs sold at prime market weight in the tax year which were farrowed and raised in the operation. No corn equivalent credits are given for hogs sold at the prime market weight which have been in the operation less than three months on the date of sale. In the "farrow-to-finish" operations, hogs sold at a weight that is less than the prime market weight also are considered for purposes of computing the livestock production credit refund for the operation, but only at the corn equivalent factor of 2.6 or $.26 per pig sold.

In "farrow-to-finish" hog operations, if any pigs are purchased at the feeder pig weight of less than 60 pounds and are sold at prime market weight (200 pounds or more), see paragraph *"e"* in this subrule for the corn equivalent factor which applies to these transactions.

d. For purposes of this rule, the term "farrow-to-feeder-pig" hog operations includes those operations where essentially all the pigs farrowed in the operation are sold at an average weight of less than 60 pounds per pig, or at "feeder pig" weight.

The potential livestock production credit refunds for these operations are computed by multiplying the corn equivalent factor of 2.6 or $.26 times the number of pigs sold at the "feeder pig" weight from these operations in the tax year. However, the corn equivalent factor of 13 or $1.30 per animal sold can be used for hogs sold at the prime market weight (200 pounds or more) from these operations for those animals where there is documentation that the hogs were born and raised in the operation or that the hogs were in the operation for a minimum of three months at the time the hogs were sold.

e. The term "finishing feeder pigs" hog operations comprises those operations where the majority of the hogs in this operation are purchased when these animals weighed less than 60 pounds or at the "feeder pig" weight and the animals are sold at the time the animals are at the prime market weight of 200 pounds or more per hog. The potential livestock production credit refunds for these operations are computed by multiplying the corn equivalent factor of 10.4 or $1.04 times the number of animals sold in the year at the prime market weight. However, only those animals that were in the operation for a minimum of three months at the time the hogs were sold at prime market weight can be considered for purposes of the livestock production credit refund. Corn equivalent factor credits of 2.6 or $.26 are given for animals which are purchased at the "feeder pig" weight of less than 60 pounds and were in the operation for a minimum of three months when the hogs were sold at a weight which is less than the prime market weight of 200 pounds or more per hog.

f. For purposes of this rule, the term "layer poultry operations" includes operations where the eggs produced by the chickens in the operation are sold for human consumption. The livestock production credit refunds for these operations are computed on the basis of the average number of chickens in the operation in the tax year multiplied by the corn equivalent factor of .88 or $.088. The average number of chickens in the operation in the tax year is the aggregate of the number of chickens in the operation on the first day in the tax year that the operation was in production and the number of chickens in the operation on the last day of the tax year in which the operation was in production divided by 2.

However, in a situation where the operation was started or was shut down sometime during the tax year, the livestock refund amount otherwise computed must be reduced by 8.33 percent for each month in the tax year in which the operation was not in production. Thus, in the case where the computed livestock refund amount was $2,000 and the operation was in production for only nine months of the tax year, the adjusted refund amount would be $1,500 ($2,000 x .0833 x (3) = $500). ($2,000 - 500 = $1,500)

g. For purposes of this rule, the term "turkey production operations" means operations involved in raising domestic turkeys for sale for human consumption and where the turkeys are sold at a prime market weight. The prime market weight for male or tom turkeys is between 30 and 35 pounds. The prime market weight for hen turkeys is between 22 and 25 pounds. The livestock production credit refund for this type of operation is computed by multiplying the number of turkeys sold in the tax year at the prime market weight times the corn equivalent factor of 1.5 or $.15. However, only those turkeys that were in the operation for a minimum of three months on the date the turkeys were sold may be considered for purposes of computing the livestock production credit for the turkey operation.

h. For purposes of this rule, the term "broiler poultry operations" means poultry production operations whereby the chickens raised in the operations are sold for human consumption at a prime market weight or broiler weight between 3 pounds and 6 pounds depending on the breed or breeds of chickens. The livestock production credit refund for this type of operation is computed by multiplying the number of chickens sold in the tax year at broiler weight by the corn equivalent factor of .15 or $.015. However, only chickens that are in the broiler operation for a minimum of six weeks before the chickens are sold at broiler weight may be considered for purposes of computing the livestock production credit for these operations.

i. Reserved.

j. For purposes of this rule, "stocker cattle operations" are beef cattle operations where essentially all cattle in the operations are purchased as calves, raised in the operation at least two months, and the cattle are sold in a range from 700 to 900 pounds per head which is deemed to be the "stocker weight." Cattle in the operation that were sold at a weight of less than 700 pounds may not be counted for purposes of computing the livestock production credit refund for the operation. The livestock production credit refunds for these operations is computed on the basis of the number of cattle sold in the year at the stocker weight times the corn equivalent factor of 41.5 or $4.15 per head. Cattle sold in the tax year must be reported on a first-in, first-out basis unless records of the taxpayer can support a different order of sale of the animals. If this operation includes calves that were raised on the farm where they were born, these calves qualify for the corn equivalent factor of 41.5 or $4.15 per head if the calves were unsold at the end of the tax year and the calves were in the operation for a minimum of two months after the calves were weaned.

k. For purposes of this rule, "beef feedlot operations" include those beef cattle operations whereby the cattle are purchased as calves approximately 60 days from the time the calves were weaned or at a "stocker weight" and are sold at a feedlot weight of 900 pounds or more after a three-month period when the animals were on a high concentrate diet. Note that any animals which are purchased for the operation and are maintained in the herd for less than four months at the time of sale do not qualify the taxpayer for the livestock production credit refund of $7.50 per head of cattle sold. The livestock production credit refund for these operations is computed by multiplying the number of cattle sold in the year at the feedlot weight times the corn equivalent amount of 75 or $7.50 per animal. However, if any cattle in the operation are sold at the "stocker" weight of at least 700 pounds but less than 900 pounds, these animals may be counted for the livestock production credit refund at a corn equivalent amount of 41.5 or $4.15 per head of cattle sold to the extent the cattle were in the operation for two months or more at the time of sale. If any cattle in the operation in the tax year were sold at a weight of less than 700 pounds, the sales of these cattle may not be counted for the livestock production credit refund. Cattle sold in the tax year must be reported on a first-in, first-out basis unless records of the taxpayer can support a different order of sale of the cattle.

l. For purposes of this rule, "dairy cattle operations" includes those cattle operations where the primary purpose of the operations is the production of milk and milk products for human consumption. The livestock production credit refund is computed by multiplying the aggregate of the number of milking cows in lactation on December 31 of the tax year and the number of cows bred to calve within 60 days of December 31 and the number of breeding bulls in inventory on December 31 times the corn equivalent number of 350 or $35 per cow. However, cattle that were purchased in the period between July 1 and December 31 of the calendar year may not be considered for purposes of computation of the livestock production credit for the dairy operation. In the case of a "dairy cattle operation" which

started or ceased production in the tax year, the livestock production credit refund otherwise computed must be reduced by 8.33 percent for each month in the tax year in which the livestock operation was not in production. Heifers in the operation are not counted for purposes of the credit until the animals are bred to calve.

m. For purposes of this rule, "ewe flock sheep operations" are sheep operations whereby the majority of the sheep and lambs sold from the operation were born and raised in the operation. The livestock production credit refunds for these operations are computed by multiplying the number of ewes and rams in inventory on December 31 of the tax year times the corn equivalent factor of 20.5 or $2.05 per ewe or ram. Any ewes or rams purchased within three months before December 31 of the tax year may not be considered for purposes of computing the livestock production credit for the operation. In addition, lambs sold in the tax year from the operation may be counted for the production credit refund at 4.1 corn equivalents or $.41 for each lamb sold to the extent the lambs were in the operation for a minimum of three months prior to the date of sale.

n. For purposes of this rule, "sheep feedlot operations" are sheep production operations where lambs born and raised in the operation are sold after the lambs have been in the operation for a minimum of three months prior to the date of sale. The livestock production credit refunds are computed by multiplying the number of lambs sold in the tax year times the corn equivalent factor of 4.1 or $.41.

o. For the purposes of this rule and for tax years beginning on or after January 1, 1998, "cow-calf operations" means those livestock cattle production operations that include bred cows, bred heifers, and breeding bulls. The livestock production credit refunds for cow-calf operations are determined only on the number of bred cows, bred heifers, and breeding bulls in inventory of the operations on December 31 of the tax year times the corn equivalent factor of 111.5 or $11.15. However, only those bred cows, bred heifers, and breeding bulls in inventory on December 31 which were also in inventory on July 1 of the same calendar year may be counted for purposes of computing the livestock production refunds.

305.8(3) *Filing claims for the livestock production credit refunds.* Taxpayers who are eligible for the livestock production credit refunds must file refund requests on claim forms provided by the department that must be attached to their income tax returns for the tax year in which the livestock production occurred. The claim forms must be filed with the income tax returns within ten months after the end of the tax year of the return in order for the refund claims to be timely. Thus, in the case of a taxpayer filing a livestock production refund claim form with the 1996 Iowa income tax return for calendar year 1996, the claim forms must be filed by October 31, 1997, in order for the claims to be timely. Taxpayers may not request extensions for filing claims for the livestock production refunds.

The department will determine by February 28 of the year after the year in which the livestock production credit refund claims are to be filed if the total amount requested on the refund claims exceeds the amount appropriated for the refunds for that tax year. If a taxpayer's refund claim is not payable on February 28 because the taxpayer is a fiscal year filer, that taxpayer's claim will be considered to be a claim for the following tax year. However, in order for this claim to be considered to be a valid refund claim for the following tax year, the refund claim must have been filed within ten months after the end of the fiscal year of the taxpayer. However, in the case of livestock production credit refund claims for fiscal year periods beginning in 1996 which are not received soon enough to be considered for the refunds to be issued in February 1998, only claims for cow-calf livestock production operations will be considered with the livestock production refund claims for the 1997 tax year.

If a taxpayer files a fraudulent claim for a livestock production credit refund for a tax year, the taxpayer will be considered to have forfeited any right or interest to a livestock production refund for any subsequent tax year after the year of the fraudulent claim.

305.8(4) *Records needed to establish livestock production credit refunds.* The burden is on the taxpayer to maintain those records and documents which support the livestock production credit refund that was claimed by the taxpayer. Necessary records and documents must include, but are not limited to, the ones mentioned in this subrule. Some of the necessary records are inventory schedules showing the number of livestock or poultry in the livestock operation on certain dates in the tax year. Sales of livestock or poultry in the tax year must be supported by scale tickets, packing house invoices, sales receipts, sales barn invoices, and similar documents. Dairy herd improvement association records and

similar inventory forms can be used to establish the number of animals or the number of birds on hand in the operation on a certain day in the tax year. These documents are not to be submitted with the taxpayer's income tax return with the livestock production credit refund claim form. Instead, the documents are to be retained with other tax records for at least three years in case of possible audit by the department of revenue.

305.8(5) *Repeal of the livestock production credit refund.* The livestock production credit was repealed on November 1, 2008, for refund claims filed on or after that date. Any livestock production credit refunds requested on Iowa tax returns filed on or after November 1, 2008, will not be issued.

This rule is intended to implement Iowa Code sections 422.120, 422.121, and 422.122 as amended by 2009 Iowa Acts, Senate File 478, section 152.

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◊ Two or more ARCs

CHAPTER 504
ASSESSMENTS, REFUNDS, APPEALS

[Prior to 12/17/86, Revenue Department[730]]
[Prior to 11/2/22, see Revenue Department[701] Ch 55]

701—504.1(422) Notice of discrepancies.

504.1(1) *Notice of adjustment.* An employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of the discovery by ordinary mail. The notice shall not be termed an assessment, and it may inform the taxpayer of the amount due if the information discovered is correct.

504.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should then file claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which the taxpayer considers relevant to the situation. Documents and records supporting the taxpayer's position may be required.

This rule is intended to implement Iowa Code section 422.25.
[Editorial change: IAC Supplement 11/2/22]

701—504.2(422) Notice of assessment. If after following the procedure outlined in 504.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment, without compliance with 504.1(1) and 504.1(2), or a jeopardy assessment may be issued. All notices of assessment shall contain the signature of the director.

This rule is intended to implement Iowa Code sections 422.25 and 422.28.
[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—504.3(422) Refund of overpaid tax. The following are provisions for refunding or crediting to the taxpayer deposits or payments for tax in excess of amounts legally due.

504.3(1) A claim for refund of corporation income tax may be made on a form obtainable from the department. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

504.3(2) A corporate taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

504.3(3) When an overpayment of estimated tax is indicated on the face of the return, the overpayment will ordinarily be refunded to the taxpayer by the department without the filing of a formal claim for refund. If a refund of the indicated overpayment is not received within a reasonable period of time, a claim for refund may be filed by the taxpayer on an official form obtainable from the Taxpayer Services Section, Iowa Department of Revenue, P.O. Box 10457, Des Moines, Iowa 50306.

If an overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund shall be allowed.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may be properly assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year or refunded, the election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

504.3(4) Reserved.

504.3(5) Refunds—statute of limitations for tax years ending after January 1, 1979. The statute of limitations with respect to which refunds or credits may be claimed are:

a. The later of

(1) Three years after the due date of payment upon which refund or credit is claimed; or

(2) One year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax matter with respect to the particular tax year. The taxpayer, however, must have notified the department of the matter within six months after the specified three-year period. The term "matter" includes, but is not limited to the execution of waivers and commencement of audits. The refund is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in 504.3(5)*"a"*(1) of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

d. Three years after the due date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

504.3(6) Reserved.

504.3(7) Refunds—statute of limitations for taxpayers who paid 90 percent of the tax by the due date and filed the original return in the six-month extended period. If a taxpayer has paid 90 percent of the income tax required to be shown due by the original due date of the return and has filed the original income tax return sometime in the six-month extended period after the original due date, the taxpayer may file an amended return within three years of the extended due date of the return and shall be within the statute of limitations for refund. This position is supported by the Iowa Supreme Court in *Conoco, Inc. v. Iowa Department of Revenue and Finance*, 477 N.W.2d 377 (Iowa 1991). See also 701—subrule 301.2(4) which pertains to the extended period for filing the Iowa income tax return when 90 percent of the tax is paid by the original due date of the Iowa income tax return.

EXAMPLE 1. Corporation A had paid at least 90 percent of the tax shown due on its Iowa corporation income tax return for the year ending December 31, 1999, by the April 30 original due date and filed its original 1999 Iowa return on May 15, 2000. Corporation A determined that it was entitled to claim additional deductions on the original 1999 Iowa return, so Corporation A filed an amended 1999 return on October 31, 2003. The amended return was filed within the three-year statute of limitations for refund since it was filed within three years of the extended due date of the return, October 31, 2000. The six-month extended due date applied in this case because the original return was filed within the six-month extended period.

EXAMPLE 2. Corporation B paid 90 percent of the tax shown due on its return for the period ending June 30, 2000, by the October 31 original due date and filed the original return on or before the October 31, 2000, original due date for this return. Corporation B determined that when it filed the original Iowa return for the period ending June 30, 2000, Corporation B failed to claim an Iowa credit for increasing research activities. Corporation B filed an amended Iowa return on November 15, 2003, to claim the Iowa credit for increasing research activities. This amended return was rejected by the department because

it was not filed within three years of the due date of the return. Although Corporation B had paid 90 percent of the tax by the due date, the due date was not extended because the original return had been filed by the due date of October 31, 2000.

This rule is intended to implement Iowa Code section 422.73 as amended by 2012 Iowa Acts, Senate File 2328.

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CHAPTER 603
ASSESSMENTS, REFUNDS, APPEALS

[Prior to 12/17/86, Revenue Department[730]]
[Prior to 11/2/22, see Revenue Department[701] Ch 60]

701—603.1(422) Notice of discrepancies.

603.1(1) *Notice of adjustment.* An employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of the discovery by ordinary mail. The notice shall not be termed an assessment, and it may inform the taxpayer of the amount due if the information discovered is correct.

603.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should then file claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which the taxpayer considers relevant to the situation. Documents and records supporting the taxpayer's position may be required.

This rule is intended to implement Iowa Code sections 422.25, 422.28 and 422.66.
[Editorial change: IAC Supplement 11/2/22]

701—603.2(422) Notice of assessment. If after following the procedure outlined in subrule 603.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment, without compliance with subrules 603.1(1) and 603.1(2), or a jeopardy assessment may be issued. All notices of assessment shall bear the signature of the director.

This rule is intended to implement Iowa Code sections 422.25, 422.30 and 422.66.
[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—603.3(422) Refund of overpaid tax. The following are provisions for refunding or crediting to the taxpayer deposits or payments for tax in excess of amounts legally due.

603.3(1) A claim for refund of franchise tax may be made on a form obtainable from the department. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

603.3(2) A franchise taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

603.3(3) When an overpayment of estimated tax is indicated on the face of the return, the overpayment will ordinarily be refunded to the taxpayer by the department without the filing of a formal claim for refund. If a refund of the indicated overpayment is not received within a reasonable period of time, a claim for refund may be filed by the taxpayer on an official form obtainable from the Taxpayer Services Section, Iowa Department of Revenue, P.O. Box 10457, Des Moines, Iowa 50306.

If an overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund shall be allowed.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may be properly assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year or refunded, the election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

603.3(4) Reserved.

603.3(5) Refunds—statute of limitations for tax years ending after January 1, 1979. The statute of limitations with respect to which refunds or credits may be claimed is:

a. The later of:

(1) Three years after the due date of payment upon which refund or credit is claimed; or

(2) One year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax matter with respect to the particular tax year. The taxpayer, however, must have notified the department of the matter within six months after the specified three-year period. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in 603.3(5)*"a"*(1) of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

d. Three years after the due date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

603.3(6) Reserved.

603.3(7) Refunds—statute of limitations for taxpayers who paid 90 percent of the tax by the due date and filed the original return in the six-month extended period. If a taxpayer has paid 90 percent of the income tax required to be shown due by the original due date of the return and has filed the original income tax return sometime in the six-month extended period after the original due date, the taxpayer may file an amended return within three years of the extended due date of the return and shall be within the statute of limitations for refund. This position is supported by the Iowa Supreme Court in *Conoco, Inc. v. Iowa Department of Revenue and Finance*, 477 N.W.2d 377 (Iowa 1991). See also 701—subrule 301.2(4) which pertains to the extended period for filing the Iowa income tax return when 90 percent of the tax is paid by the original due date of the Iowa income tax return.

See 701—subrule 504.3(7) for examples illustrating how this rule is applied.

This rule is intended to implement Iowa Code section 422.66 and section 422.73 as amended by 2012 Iowa Acts, Senate File 2328.

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TITLE VIII
FIDUCIARY INCOME TAX

CHAPTER 700
FIDUCIARY INCOME TAX

[Formerly fiduciary rules ch 48, See IAB 9/30/81]
[Prior to 12/17/86, Revenue Department[730]]
[Prior to 11/2/22, see Revenue Department[701] Ch 89]

701—700.1(422) Administration.

700.1(1) *Definitions.* The following definitions cover 701—Chapter 700 and are in addition to the definitions contained in Iowa Code section 422.4.

"Administrator" means the administrator of the compliance division of the department of revenue or the personal representative of an intestate estate.

"Compliance division" is the organizational unit of the department created by the director to administer the inheritance and fiduciary income tax laws.

"Department" means the department of revenue.

"Director" means the director of revenue.

"Gross income" includes any and all income prior to any deductions as set forth on the Iowa fiduciary return of income.

"Personal representative" means the executor, administrator or trustee of a decedent's estate.

"Tax" means the income tax imposed on estates and trusts under Iowa Code section 422.6.

"Taxable income" is the income of the fiduciary and also includes distributions to beneficiaries as set forth on the Iowa fiduciary return of income.

"Taxpayer" means the executor, administrator or other personal representative of a decedent's estate required to file a return for the estate and the decedent under Iowa Code sections 422.14 and 422.23. "Taxpayer" also means the trustee of a trust subject to tax under 26 U.S.C. Section 641 and required to file a return under 26 U.S.C. Section 6012(b), as well as the trustee of the bankruptcy estate of an individual under Chapter 7 or 11 of Title 11 of the United States Code.

700.1(2) *Delegation of authority.* The director delegates to the administrator of the compliance division, subject always to the supervision and review of the director, the authority to administer the fiduciary income tax. This authority specifically includes, but is not limited to: determining the correct fiduciary income tax liability; making tax liability assessments; issuing refunds; releasing tax liens; filing tax liability claims in probated estates and releasing the claims upon payment of the tax; and issuing the certificate of acquittance authorized by Iowa Code section 422.27. The administrator of the compliance division may delegate the examination and audit of tax returns to the supervisors, agents and employees and representatives of the department.

This rule is intended to implement Iowa Code sections 421.2, 421.4, 422.6, 422.23, 422.25, 422.26, 422.27 and 422.73.

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701—700.2(422) Confidentiality.

700.2(1) *Confidential information.* The state and federal returns and accompanying schedules, and the taxpayer's books, records, documents and accounts of any person, firm or corporation are held confidential, except the information which is deemed a public record by state and federal law. See 26 U.S.C. Section 6103 of the Internal Revenue Code pertaining to the confidentiality and disclosure of federal tax returns and federal tax return information. See rules 701—6.3(17A) and 701—300.6(422) regarding the confidentiality of a decedent's individual income tax returns.

700.2(2) *Information not confidential.* Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not confidential. The fact alone that a return has or has not been filed with the department is not confidential information. 1976 Op. Att'y. Gen. 679.

700.2(3) *Documents to be filed.*

a. Estates of Iowa decedents. A copy of the inheritance tax return and probate inventory required by Iowa Code section 633.361 and 701—subrule 900.2(2) (relating to inheritance tax) and a copy of the

decedent's will in testate estates shall be filed with the first fiduciary return of income, unless previously filed with the department for inheritance tax purposes.

b. Nonresident decedents—ancillary administration. If ancillary administration has been opened for the estate of a nonresident decedent, a copy of the inheritance tax return and probate inventory and a copy of the decedent's will in testate estates shall be filed with the department, subject to the same conditions and requirements in estates of resident decedents. If ancillary administration has not been opened for a nonresident decedent with Iowa taxable income, a copy of the inventory filed in the primary estate, or the portion of the inventory listing the property generating the Iowa income and the decedent's will in testate estates, must be filed with the department with the first fiduciary return of income.

c. Inter vivos trusts. Inter vivos trusts with a situs in Iowa and inter vivos trusts with a situs outside Iowa with Iowa taxable income shall submit to the department with the first fiduciary return the following: (1) a copy of the trust instrument; (2) a list of the trust assets (those generating Iowa taxable income in case of trusts with a situs outside Iowa); and (3) an estimate of the fair market value of each asset. If the trust instrument is amended or additional assets are added to the trust corpus (additional assets which generate Iowa taxable income in case of trusts with a situs outside Iowa), a copy of the amended items must be submitted to the department with the first fiduciary return of income following the change.

d. Testamentary trusts. If the estate was not reported for inheritance tax purposes, a copy of the decedent's will and a list of assets in the trust corpus in testamentary trusts with a situs both within and without Iowa must be submitted to the department with the first fiduciary return of income.

e. Safe deposit box. Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

700.2(4) *Required records.* The taxpayer shall keep records and accounts necessary to substantiate reportable income and deductions. Upon request, the taxpayer shall furnish the department documents, such as copies of tax returns, court orders, trust instruments, annual reports, canceled checks and like information, as may be reasonably necessary to enable the department to determine the correct tax liability. *Tiffany v. County Board of Review,* 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

This rule is intended to implement Iowa Code sections 422.25, 422.27, 422.28, 422.73 and 1997 Iowa Acts, chapter 60, sections 1 and 2.

[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—700.3(422) Situs of trusts.

700.3(1) *Testamentary trusts.* The situs of a testamentary trust for tax purposes is the state of the decedent's residence at the time of death until the jurisdiction of the court in which the trust proceedings are pending is terminated. In the event of termination and the trust remains open, the situs of the trust is governed by the same rules as pertain to the situs of inter vivos trusts.

700.3(2) *Inter vivos trusts.* If an inter vivos trust is created by order of court or makes an accounting to the court, its situs is the state where the court having jurisdiction is located until the jurisdiction is terminated. The situs of an inter vivos trust which is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679 is the state of the grantor's residence, or the state of residence of the person other than the grantor deemed the owner, to the extent the income of the trust is governed by the grantor trust rules.

If an inter vivos trust (other than a trust subject to the grantor trust rules in 26 U.S.C. Sections 671 to 679) is not required to make an accounting to and is not subject to the control of a court, its situs depends on the relevant facts of each case. The relevant facts include, but are not limited to: the residence of the trustees or a majority of them; the location of the principal office where the trust is administered; and the location of the evidence of the intangible assets of the trust (such as stocks, bonds, bank accounts, etc.). The residence of the grantor of a trust, not subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679, is not a controlling factor as to the situs of the trust, unless the person is also a trustee. A statement in the trust instrument that the law of a certain jurisdiction shall govern the administration of

the trust is not a controlling factor in determining situs. The residence of the beneficiaries of a trust is also not relevant in determining situs.

700.3(3) *Part-year trust.* A trust that has its situs part of the year within Iowa and part of the same year outside of Iowa is to report its income on Iowa Form IA-1041. Essentially, to report the income, the trust will be treated similarly to a nonresident or part-year resident for Iowa income tax purposes. To complete the return, the trust should complete page one of Form IA-1041, the income and deductions portions of the form. The income and deductions reported in these two portions of the form should include all the trust's income reported during the tax year. After the previous computation has been completed, then Schedule C of Form IA-1041 is completed to determine a nonresident/part-year resident credit similar to the calculation set forth in rule 701—304.5(422) for individual income tax.

This rule is intended to implement Iowa Code sections 422.6, 422.8, and 422.14.

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701—700.4(422) Fiduciary returns and payment of the tax.

700.4(1) *Form of return.* The form of the fiduciary return shall be prescribed by the director. It shall conform as nearly as possible to the federal fiduciary return.

700.4(2) *Required federal returns and schedules.* Nonresident estates with Iowa taxable income and trusts with situs outside Iowa with Iowa taxable income must submit a copy of the federal fiduciary return with the Iowa return. Estates of Iowa decedents and trusts with a situs in Iowa must submit copies of the federal schedules that substantiate gross income, deductions and ordinary and throwback distributions to beneficiaries with the Iowa return.

700.4(3) *Same form for nonresident estates and foreign situs trusts.* Nonresident estates and foreign situs trusts shall use the same form for reporting Iowa taxable income as prescribed for resident estates and trusts with a situs in Iowa.

700.4(4) *Accounting period—tax year.* The initial fiduciary return may reflect either a calendar or fiscal year accounting period, without the department's prior approval. If a fiscal year is elected, it may end on the last day of any month, except December, but in no case shall the fiscal year adopted be for a period longer than the last day of the month preceding the decedent's death or the month the trust was created. The accounting period for the purpose of the tax imposed by Iowa Code section 422.6 must be the same accounting period that is adopted for federal income tax purposes. This limitation is equally applicable to estates of resident and nonresident decedents and trusts with a situs within and without Iowa. If the taxpayer has not adopted a taxable year prior to the time the return is due to be filed and the tax paid, the taxable year is a calendar year until authorization is granted to change to a fiscal year. See 26 U.S.C. Sections 441 to 443, federal regulations Sections 1.441 - 1(g)(3) and 1.442.2.

The permissible taxable years are illustrated by the following examples:

EXAMPLE 1. Decedent died July 4, 1990. The taxable year for the estate commences the day after the decedent's death (July 5, 1990) and will end December 31, 1990, if a calendar year is adopted as the taxable year. If a fiscal year is adopted, it can end on July 31, 1990, or the last day of any future month (except December 31, 1990), but no later than June 30, 1991, subject to the condition that it is selected prior to the time the return and payment are originally due.

EXAMPLE 2. Grantor creates an irrevocable trust on July 27, 1989. On July 1, 1990, the trustee filed the initial fiduciary return of income, adopting at that time a taxable year ending November 30, 1989. Since the return was due March 17, 1990 (March 15 was a Saturday) for federal income tax purposes and March 31, 1990, for Iowa income tax purposes, it is delinquent and a fiscal year accounting period is disallowed and the trust taxable year is the calendar year.

700.4(5) *Short year returns.* If an estate or trust is in existence only a portion of the taxable year, a return must be filed for the partial year in accordance with subrule 700.4(6).

700.4(6) *Minimum filing requirements.*

a. General rule. A fiduciary return of income must be filed if the gross income of the estate or trust for the taxable year is $600 or more, regardless of any tax liability.

b. Exception to the general rule. A final fiduciary return of income must be filed for the taxable year in which an estate or trust is closed, regardless of the amount of gross income, if an income tax certificate of acquittance is requested. The final fiduciary return of income constitutes an application for an income tax certificate of acquittance pursuant to Iowa Code sections 422.27, 633.477 and 633.479. For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.

700.4(7) *Amended returns.* An amended return must be filed if there is a change in income or deductions that results in a tax or additional tax due, or in a change in income, deductions or credits distributable to a beneficiary. An amended return may be filed in lieu of a claim for refund when a change in reportable income or deductions results in a tax overpayment. See 701—subrules 305.3(8) and 305.3(15) for the period of time for making a claim for a refund of excess tax paid.

700.4(8) *Return due date.* The fiduciary return must be filed with the department and the tax due paid in full on or before the last day of the fourth month following the end of the taxable year. Payment of 90 percent of the tax due with the filing of a return will grant a taxpayer a six-month automatic extension of time to pay the remaining tax due. If the due date falls on a Saturday, Sunday, or holiday, the due date is the next day that is not a Saturday, Sunday, or holiday as defined in Iowa Code section 421.9A. Returns not timely filed with 90 percent of the tax timely paid are subject to penalty as provided in rule 701—700.6(422).

700.4(9) *Duties of the taxpayer.*

a. Income of the estate or trust. A taxpayer must timely file a fiduciary return if the minimum filing requirements specified in subrule 700.4(6) are met and must pay 90 percent of the tax due. Receipt of the return with 90 percent of the tax due paid will result in an automatic six-month extension of time to pay the remaining tax due. The department is not required to file a claim for taxes in the estate proceedings and have the claim allowed before the tax is paid. *In re Estate of Oelwein,* 217 Iowa 1137, 1141, 251 N.W. 694 (1933); *Findley v. Taylor,* 97 Iowa 420, 66 N.W. 744 (1896). The personal representative of an estate must pay the tax on income from property in the personal representative's possession, prior to applying the income to estate obligations. See Iowa Code section 633.352.

b. Decedent's final individual income tax return. The executor, administrator, or other personal representative of the decedent's estate must file an individual income tax return for the decedent for the year of the decedent's death if the gross income attributable to the decedent for the part of the taxable year ending with death equals or exceeds the minimum filing requirements. See 701—subrules 301.1(1) to 301.1(3) and 301.1(5) for the minimum filing requirements for individual income tax. If the surviving spouse of a decedent has not remarried during the balance of the taxable year and has the same taxable year as the decedent, the personal representative of the decedent's estate may file a joint return with the surviving spouse for the taxable year of death. In the event of such an election, the joint return must include the surviving spouse's income for the entire taxable year and the decedent's income for the portion of the taxable year ending with death. Income attributable to property owned by the decedent and the decedent's rights to income received after the day of the decedent's death are income of the decedent's estate or the persons succeeding to the property or rights to income. See Iowa Code sections 633.350 to 633.353 for the circumstances under which the estate is charged with the income from the decedent's property or the decedent's rights to income. Income from property held by the decedent and others in joint tenancy received after the decedent's death is charged to the surviving joint tenants, not to the decedent's estate.

The final return for a decedent may be filed at any time after the decedent's death, but in no event later than the last day of the fourth month following the end of the decedent's normal taxable year. The final income tax return of the decedent, if the minimum filing requirements are met, must be filed prior to the time an income tax certificate of acquittance is requested, even though this may require the early filing of the return. Therefore, filing a joint return with the surviving spouse is precluded if the decedent's final return is required to be filed prior to the end of the normal taxable year.

c. Decedent's prior year returns. The personal representative of the decedent's estate is not limited to filing the decedent's final return and paying the tax due. In addition, the personal representative has the duty to file a return, if none was filed, and to pay any additional income tax owed by the decedent

that may become due by reason of an audit of the decedent's income or prior year returns. The personal representative's duty to pay the tax, or additional tax, is limited to the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's tax liability according to the order for paying debts and charges specified in Iowa Code section 633.425.

d. *Composite return requirement.* The personal representative of a decedent's estate and the trustee of a trust are subject to the composite return filing and tax payment obligations under Iowa Code section 422.16B and 701—Chapter 405 if the estate or trust has nonresident beneficiaries.

e. *Beneficiary's share of income, deductions and credits.* After the final distribution of income for the taxable year, but prior to the date for filing a beneficiary's individual income tax return, the personal representative of an estate and the trustee of a trust shall furnish each beneficiary receiving a distribution from an estate or trust a written statement specifying the amount and types of income subject to Iowa tax and the kinds and amounts of the deductions and credits against the tax. A copy of the federal schedule K-1, Form 1041, adapted to reflect Iowa taxable income, may be substituted in lieu of the statement.

f. *Liability of a personal representative and trustee.* A personal representative of a decedent's estate and the trustee of a trust shall be personally liable for the amount of Iowa composite tax required to be paid under Iowa Code section 422.16B and 701—Chapter 405 if the composite tax liability attributable to a nonresident beneficiary is not paid and, in addition, is personally liable for any penalty and interest due if the tax is not paid to the department within the time prescribed by law.

This rule is intended to implement Iowa Code sections 422.6, 422.8, 422.16, 422.21, 422.23, 422.25, 422.27, 633.352 and 633.425.

[**ARC 6551C**, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22; **ARC 6900C**, IAB 2/22/23, effective 3/29/23; Editorial change: IAC Supplement 10/18/23]

701—700.5(422) Extension of time to file.

700.5(1) *Automatic extension of time to file.*

a. If the taxpayer has paid at least 90 percent of the tax required to be shown due by the due date and has not filed a return by the due date, the director will consider that the taxpayer has requested an extension of time to file the return and will automatically grant an extension of up to six months to file the return. The taxpayer does not have to file an application for extension form with the department to get the automatic extension to file the return within the six-month period after the due date and not be subject to penalty. However, if the taxpayer wants to make a tax payment to ensure that at least 90 percent of the tax has been paid on or before the due date, the payment should be made with the Iowa fiduciary income tax payment voucher form. This form can be found on the department's website at tax.iowa.gov; requested by mail from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306; or requested by telephone at (515)281-3114.

b. To determine whether or not at least 90 percent of the tax was paid on or before the due date, the aggregate amount of tax credits applicable on the return plus the tax payments made on or before the due date are divided by the tax required to be shown due on the return. The tax required to be shown on the return is the sum of the income tax, lump-sum tax, minimum tax, and the trust portion of the ESBT tax. The tax credits applicable are the credits set out in Iowa Code chapter 422, subchapter II, and Iowa Code section 422.111. The tax payments to be considered for purposes of determining whether 90 percent of the tax was paid are the withholding tax payments, estimate payments, composite tax payments, and payments made with the Iowa fiduciary income tax voucher form to ensure that 90 percent of the tax was paid timely.

c. If the aggregate of the tax credits and the tax payments is equal to or greater than 90 percent of the tax required to be shown due, the taxpayer will have met the "90 percent" test and no penalty will be assessed. However, the taxpayer will still be subject to statutory interest on any tax due when the return is filed.

d. Any tax elections will be considered to be valid in instances when the return is filed within the six-month extended period after the due date. The fact that the taxpayer has paid less than 90 percent of

the tax required to be shown due will not invalidate any tax elections made on the return, if the return is filed within the six-month extended period.

700.5(2) *Extension of time to file due to illness, death, absence, or other legitimate reason.* The taxpayer is required to file the taxpayer's fiduciary income tax return on or before the due date of the return with payment in full of the amount required to be shown due with the return. However, in any instance where the taxpayer is unable to file the return by the due date because of illness or death in the taxpayer's immediate family, unavoidable absence of the taxpayer, or other legitimate reason, the director may grant a six-month extension of time to file the return.

700.5(3) *Extension of time for the decedent's final tax return.* 701—subrule 301.2(4), which provides for extensions of time to file individual income tax returns, will apply to the decedent's final tax return.

This rule is intended to implement Iowa Code section 422.21.

[**ARC 7003C**, IAB 4/19/23, effective 5/24/23]

701—700.6(422) Penalties. See rule 701—10.6(421) for the calculation of penalty for tax periods beginning on or after January 1, 1991.

[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; Editorial change: IAC Supplement 11/2/22]

701—700.7(422) Interest or refunds on net operating loss carrybacks.

700.7(1) *Interest on unpaid tax.* Tax not paid within the time prescribed by law, including the period during an extension of time, draws interest at the rate described in rule 701—10.2(421). Payments made are first credited to penalty and interest due and then to the tax liability. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990).

700.7(2) *Interest on refunds and tax paid prior to due date.* For the purpose of determining the time interest begins to accrue, all income tax withheld, estimated tax paid and other tax paid prior to the due date shall be deemed to be paid on the last day the return is required to be filed disregarding any extensions of time to file the return and pay the tax.

700.7(3) *Interest on a net operating loss carryback—the second calendar month period—on or after April 30, 1981.* For net operating losses occurring in any of the taxable years ending on or after April 30, 1981, interest accrues on excess tax paid in a prior year, if the loss is carried back to such year, only after the close of the taxable year in which the loss occurs or on the first day of the second calendar month following the date the tax to be refunded was paid, whichever time is later.

This rule is intended to implement Iowa Code section 422.25.

[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; Editorial change: IAC Supplement 11/2/22]

701—700.8(422) Reportable income and deductions.

700.8(1) *Application of the Internal Revenue Code.* Iowa Code section 422.4(16) provides that taxable income of estates and trusts for Iowa income tax purposes is the same as taxable income for federal income tax purposes, subject to certain adjustments specified in Iowa Code sections 422.7 and 422.9. Therefore, the Internal Revenue Code is also Iowa law insofar as it relates to what constitutes gross income, allowable deductions and distributions, subject to the adjustments specified above. See *First National Bank of Ottumwa v. Bair,* 252 N.W.2d 723 (Iowa 1977).

For purposes of a distribution deduction under this chapter, an estate or trust shall receive a distribution deduction only for income taxable to Iowa. For example, municipal interest will be included in the distribution deduction because it is taxable to Iowa. U.S. government interest would not be included because it is not taxable to Iowa.

For tax years ending after August 5, 1997, if the trust is a qualified preneed funeral trust as set forth in Section 685 of the Internal Revenue Code and the trustee has elected the special tax treatment under Section 685 of the Internal Revenue Code, neither the trust nor the beneficiary is subject to Iowa income tax on income accruing to the trust.

700.8(2) *Authority of federal court cases, regulations and rulings.* The director has the responsibility to enforce and interpret the law relating to the taxes the department is obligated to administer, including those portions of the Internal Revenue Code which are Iowa law under Iowa Code section 422.4(16). Federal regulations may be interpreted by Iowa courts for state tax purposes. *In re Estate of Louden,*

249 Iowa 1393, 1396, 92 N.W.2d 409 (1958). However, the construction of statutes by a court of the jurisdiction where the statute originated properly commands consideration and is highly persuasive. *Eddy v. Short,* 190 Iowa 1376, 1383, 179 N.W. 818 (1920), *In re Estate of Millard,* 251 Iowa 1282, 1292, 105 N.W.2d 95 (1960). Therefore, while federal court cases, regulations and rulings interpreting the Internal Revenue Code will be accorded every consideration, the department has the right to make its own interpretation of the Internal Revenue Code as to what constitutes taxable income for Iowa tax purposes, consistent with Iowa statutes and court decisions. Also see rule 701—303.2(422).

700.8(3) *Reportable income in general—Iowa estates and trusts.* Estates of Iowa resident decedents and trusts with a situs in Iowa must report all income received from sources within and without Iowa, regardless of whether the income is from real, personal, tangible or intangible property. See 89.8(11)*"b"* for the credit allowable against the Iowa tax for income tax paid to another state or country on income reported to Iowa for taxation.

700.8(4) *Reportable income in general—foreign situs estates and trusts.* Estates and trusts with a situs outside Iowa must report all income received from sources within and without Iowa, regardless of whether the income is from real, personal, tangible or intangible property. Foreign situs estates and trusts must also report that portion of the income which is from Iowa sources. Examples of Iowa source income include, but are not limited to: income from real and tangible personal property with a situs in Iowa, such as a farm and from a business located in Iowa; the capital gain portion of an installment sale contract of Iowa situs property; and wages, salaries and other compensation for services performed in Iowa, but received after the death of the decedent. Iowa source income would not include income from intangible personal property, such as annuities, interest on bank deposits, and dividends, unless the income was derived from a business, trade, profession or occupation carried on in Iowa. See paragraph 89.8(11)*"d"* for the credit allowed a foreign situs estate and trust for income earned outside Iowa.

700.8(5) *Income from property subject to the jurisdiction of the probate court.*

a. Probate property subject to possession by the personal representative. Income received on probate property after the decedent's death is chargeable to the estate or to the person succeeding to the decedent's property depending on whether the personal representative has the right to, or has taken possession of, the probate property producing the income. (Rev. Ruling 57-133, 1-CB 200 (1957).) If the personal representative has taken possession of or has the right to possession of a specific item of probate property, the income from this property is estate income, even though the personal representative is bound by law to distribute the income during the course of administration to a beneficiary. *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978); *In re Estate of Herring,* 265 N.W.2d 740 (Iowa 1978). The personal representative is charged with the income from this property for each taxable year until the property is distributed or otherwise disposed of. Iowa Code section 633.351 (probate code) specifies the personal representative shall take possession of the decedent's personal property, except exempt property, and also the decedent's real estate, except the homestead, if any one of the following conditions are met: if there is no distributee present and competent to take possession; if the real estate is subject to a lease; or if the distributee is present and competent and gives consent to possession. *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978); *In re Estate of Peterson,* 263 N.W.2d 555 (Iowa Ct. of Appeals 1977). In addition, Iowa Code section 633.386 (probate code) gives the personal representative authority to lease real estate (and therefore to take possession) in order to pay the debts and charges of the estate.

b. Income charged to the heir or beneficiary. Under Iowa law title to probate property, both real and personal, passes instantaneously on death to the heir or beneficiary. *In re Estate of Bliven,* 236 N.W.2d 366, 370 (Iowa 1975). If property is not subject to the personal representative's right of possession under Iowa Code section 633.351 (probate code) and the personal representative has not exercised the right to sell, lease, mortgage or pledge real and personal property to pay debts and charges under Iowa Code section 633.386 (probate code), the income from this probate property is not estate income. It is income to the person succeeding to the property.

700.8(6) *Income from nonprobate property.* Income from property not subject to the jurisdiction of the probate court is charged to the beneficiary or other person succeeding to the property. Examples of income from nonprobate property include, but are not limited to: property held in joint tenancy, annuity payments, pension and retirement plans not payable to the estate, and income from certain trusts created

by the grantor-decedent. See *Wood, Admr., v. Logue,* 167 Iowa 436, 441, 149 N.W. 613 (1914) for joint tenancy property not being subject to the jurisdiction of the probate court; also *Lang v. Commissioner,* 289 U.S. 109, 77 L.Ed. 1066, 53 S.Ct. 535 (1933).

700.8(7) *Gross income of an estate.*

a. In general. 26 U.S.C. Section 641(b) provides that the taxable income of an estate or trust shall be computed in the same manner as the taxable income of an individual, except as modified in Subchapter J of the Internal Revenue Code. The gross income of an individual and, therefore, the gross income of an estate or trust, is not given a definitive meaning in 26 U.S.C. Section 641. Paragraphs 700.8(7)*"d"* to *"q"* describe the most common kinds of income of an estate or trust. However, those paragraphs are not intended to identify all types of taxable income.

b. Definition of the period of administration. The income charged to the decedent's estate is reportable by the personal representative for each taxable year during the period of the administration of the decedent's estate, if the minimum filing requirements are met. The period of administration for Iowa income tax purposes is determined by applying federal tax law to Iowa estates because Iowa taxable income is the same as federal taxable income, subject to the adjustments provided in Iowa Code sections 422.7 and 422.9. *Old Virginia Brick Co., Inc. v. Commissioner,* 367 F.2d 276 (4th CA 1966); *First National Bank of Ottumwa v. Bair,* 252 N.W.2d 723 (Iowa 1977). It is the period actually required by the personal representative to perform the ordinary duties of administration, such as the collection of assets and the payment of debts, taxes, legacies and bequests, whether the period required is longer or shorter than the period specified under the probate code. See federal regulations 1.641(b)-3(a). An estate will be considered terminated for income tax purposes when all of the assets have been distributed, except for a reasonable amount set aside in good faith for the payment of unascertained or contingent liabilities and expenses. The delay in closing the estate cannot be capricious. *Frederich v. Commissioner,* 147 F.2d 796 (5th CA 1944). If the period of administration is terminated for income tax purposes, the heir or beneficiary is charged with the income.

c. The estate's first return—special considerations. Death terminates the decedent's taxable year. Income received the day of the decedent's death is to be reported on the decedent's final individual return. See 26 U.S.C. 443(a)(2); federal regulation Section 1.443-1(a)(1).

The taxable year of a decedent's estate begins the day after the decedent's death. Income received after the decedent's death is either chargeable to the decedent's estate or to the person succeeding to the property producing the income. See 700.8(5)*"a"* and 700.8(5)*"b."* Income the decedent had a right to receive prior to death, but did not receive before death, is not the decedent's income, but is income in respect of a decedent and is chargeable either to the decedent's estate when received or to the person succeeding to the right to income. See 26 U.S.C. Section 691(a) and applicable federal regulations on what constitutes income in respect of a decedent. Trade or business expenses, interest, taxes and expenses for the production of income owing by the decedent at death, but unpaid, and the allowance for depletion on income not received at death, are not deductible on the decedent's final return. These are deductible by the estate or the person succeeding to the property when paid. Medical expenses incurred by the decedent, but unpaid at death, are not deductible by the estate. These are deductible on the decedent's individual return for the year the expenses were incurred, if paid within one year after the decedent's death and if the medical expense is not claimed as a deduction for federal estate tax purposes under 26 U.S.C. Section 2053. See 26 U.S.C. Section 213(d) and federal regulations thereunder relating to deductible medical expense of a decedent. Funeral expense is not a deductible item for income tax purposes, although it is a deductible expense for federal estate tax and Iowa inheritance tax purposes. See 701—paragraphs 900.6(1)*"g"* and 900.6(3)*"b."* Unused ordinary and capital losses remaining after the decedent's income tax liability for the year of death has been determined are not carried forward to the decedent's estate. The unused losses terminate with death, except to the extent they may be used by the decedent's surviving spouse. See Rev. Ruling 74-175, 1 CB 52 (1974). The estate of a decedent is a different taxpayer than the decedent.

d. Dividends. All income classified as dividends under 26 U.S.C. Section 61 and federal regulation section 1.61-9, received or constructually received, during the taxable year constitutes gross income to the estate or trust. However, some income labeled as dividends is for tax purposes classified as interest.

For example, income from cooperative banks, credit unions, domestic building and loan associations, domestic savings and loan associations, federal savings and loan associations and mutual savings banks are considered interest and not dividends.

e. Interest. All interest received or constructually received during the taxable year, with the exception of interest, but not capital gain, from federal securities and from certain bonds issued by the state of Iowa and its political subdivisions listed in rule 701—302.3(422) is income to the estate or trust. Interest from securities issued by a state and its political subdivisions or from foreign securities is included in gross income for Iowa tax purposes, even though the interest may be exempt from federal income tax, except for those bonds listed in rule 701—302.3(422).

f. Partnerships and other estates and trusts. If a partnership in which the decedent had an interest is not terminated at death, the deceased partner's share of the partnership income is considered to be all received at the end of the partnership taxable year. As a result, none of the partnership income is chargeable to the deceased partner, unless the day of the partner's death coincides with the day the partnership year ends. It is chargeable to the deceased partner's estate or the person succeeding to the partner's interest, notwithstanding the fact the deceased partner may have withdrawn most or all of the deceased partner's share of the partnership income prior to death. Federal regulation section 1.706-1(C)(3)(ii); Rev. Ruling 68-215, 18 I.R.B. 14 (1968).

In general, if an estate or trust and its beneficiaries have different taxable years, the beneficiary is required to report the income from the estate or trust as if it were all paid on the last day of the taxable year of the estate or trust. Federal regulation section 1.662(C)-1. *Hay v. U.S.,* 263 F. Supp. 813 (D.C. Tex. 1967). However, if the beneficiary dies during the taxable year of an estate or trust, the taxable income of the beneficiary's estate includes only the portion of the income of the other estate or trust which was required to be distributed to the beneficiary, but was not in fact distributed to the beneficiary before death. The income that was in fact distributed by the other estate or trust prior to the beneficiary's death is properly included in the beneficiary's final income tax return. See federal regulation 1.662(C)-2.

g. Rents and royalties. Income received after death for the use or occupancy of the decedent's real and personal property is the income of the decedent's estate or the income of the person succeeding to the property. See 700.8(5)*"a"* and 700.8(5)*"b."* If the rental income was accrued, but unpaid at death, the accrued rent is income in respect of a decedent and is to be included as income, either by the estate or the person succeeding to the right to the income, in the taxable year when payment is received. Rent is not limited to payments in cash. It includes, but is not limited to, crop share rental payments when the decedent was a nonparticipating landlord. *Alvin R. Huldeen Estate v. Department of Revenue,* Sac County District Court, Probate No. 14,661 (1975). Income from the sale of grain and livestock in the estate of a participating landlord which was on hand at death is classified as income from a farm or business and not rental income.

Income from royalties would include, but is not limited to, payment for rights in books, plays, copyrights, trademarks, formulas, patents and from the exploitation of natural resources.

h. Farm and business income—in general. The death of the decedent does not alter the rules under which business and farm income is computed for income tax purposes. However, the decedent's estate as a new taxpayer may adopt a taxable year which is different from the decedent's taxable year. Also, the decedent's estate may adopt a different accounting method. The rules for determining a gain or loss from the sale or exchange of assets in the decedent's estate are the same as those for an individual. However, see 700.8(7)*"i"* and 700.8(7)*"j"* for the basis for gain or loss from the sale or exchange of property acquired from a decedent and 700.8(7)*"l"* for depreciation rules for property acquired from a decedent.

i. Basis for gain or loss—the stepped-up basis. Property acquired from a decedent receives a new basis for determining gain or loss when the property is sold or exchanged. This rule does not apply to property which is classified as income in respect of a decedent and certain other property designated in 26 U.S.C. Section 1014(b) and (c) and the federal regulations thereunder. The basis of property acquired from a decedent is either: (1) its fair market value at the time of death or the alternative value when it has been elected for federal estate tax purposes under 26 U.S.C. Section 2032, or (2) its special use value when the property has been valued for federal estate tax purposes under 26 U.S.C. Section 2032A. The decedent's basis in the property is not relevant.

If an estate files a federal estate tax return, then the basis is governed by the federal estate tax value determination. However, if an estate does not file a federal estate tax return, then Iowa inheritance tax valuation governs the basis for the property that is acquired.

EXAMPLE 1. Decedent A died July 1, 1995, owning a 160-acre Iowa farm which the decedent purchased in 1955 for $200 per acre, or $32,000. At the time of A's death, the farm had a fair market value of $2,000 per acre, or $320,000. In 1965, A and surviving spouse B purchased a residence for $35,000 in joint tenancy. Surviving spouse B, a school teacher, contributed one half of the purchase price of the residence; therefore, one-half of the residence is excluded from A's gross estate. At the time of A's death, the residence had a fair market value of $100,000. Surviving spouse B received the entire estate and did not elect the alternative or special use valuation.

B's basis for gain or loss in the farm and residence is computed as follows:

Asset	Fair Market Value at Death	New Basis for Gain or Loss	
160-acre farm	$320,000		$320,000
Residence	100,000	½ new basis	50,000
		½ old basis	17,500
			$ 67,500

Since the entire farm was acquired from A, its basis is 100 percent of the fair market value at death. Only one-half of the residence was acquired from A; therefore, only one half of the residence receives a new basis on A's death.

j. No new basis—income in respect of a decedent. Property or rights to income, classified as income in respect of a decedent under 26 U.S.C. Section 691, do not receive a new basis upon the decedent's death. It is a special exception to the stepped-up basis rule. See 26 U.S.C. Section 1014(c) and federal regulation section 1.1014-1(c).

Examples of income in respect of a decedent include, but are not limited to, the following:

1. Wages, salary or other compensation for personal services earned which are unpaid at death.
2. Interest accrued on obligations, such as bank accounts, certificates of deposit, bonds and promissory notes.
3. Accrued interest and unpaid capital gain on real and personal property installment contracts.
4. Federal income tax refunds, if claimed as a deduction on an Iowa income tax return.
5. Accounts receivable, if the decedent was on a cash accounting basis.
6. Crop share rent if the decedent was a nonparticipating landlord on a cash basis. This also includes growing crops, which are to be valued at the time of the decedent's death or alternate valuation date.

The basis for gain or loss for property classified as income in respect of a decedent is the decedent's basis in the property at the time of death.

k. Gain or loss—holding period. For the purpose of determining whether the sale or exchange of property is a long- or short-term gain or loss, the holding period of property acquired from a decedent begins the day after the decedent's death, regardless of how long the property was held by the decedent. See 26 U.S.C. Section 1.1223, federal regulation Section 1.1223-1(j). However, if the property acquired from a decedent is sold or otherwise disposed of within one year of the decedent's death, it will be considered to have been held over one year. In general, this is a sufficiently long holding period to qualify the sale or exchange as a long-term gain or loss transaction. However, a one-year holding period does not qualify horses and cattle held for draft, breeding or dairy purposes for long-term gain or loss treatment. A 24-month holding period is required by 26 U.S.C. Section 1231(b)(3) for the transaction to be considered long-term.

Therefore, if this kind of livestock is acquired from a decedent (which is usually the case) and is sold or exchanged within 24 months after the decedent's death, the sale is considered a short-term transaction. See Rev. Ruling 75-361, 2 C.B. 344 (1975). However, even if the sale or exchange results in a short-term

gain or loss transaction, the property has a stepped-up basis, because it is acquired from a decedent. See 700.8(7)*"i."*

l. Depreciation—property acquired from a decedent. Property acquired from a decedent which is subject to the allowance for depreciation, receives the same value for depreciation purposes as its basis for gain or loss in a sale or exchange, regardless of its basis or remaining useful life in the hands of the decedent. See 26 U.S.C. Sections 167(g) and 1011; federal regulation Section 1.167(g)-1. For the purpose of determining the life of an asset subject to the allowance for depreciation, the property is treated as if it were acquired the day after the decedent's death. See federal regulation Section 1.167(a)-10. The decedent's estate or other person acquiring depreciable property from the decedent may adopt a depreciation method different from that used by the decedent for the depreciable asset. See federal regulation section 1.167(a)-7.

m. Section 641(c) gain for sales or exchanges before August 6, 1997. The gain that is excluded from federal taxable income under 26 U.S.C. Section 641(c) for sales or exchanges before August 6, 1997, constitutes Iowa gross income to the estate or trust. This gain for sales or exchanges before August 6, 1997, is excluded from taxable income for federal purposes because it is subject to a special federal tax under 26 U.S.C. Section 644(a). This special federal tax was repealed for sales or exchanges occurring on or after August 6, 1997. The effect is to tax the gain for sales or exchanges before August 6, 1997, which receives separate treatment for federal income tax purposes, in the same manner as this gain was taxed prior to the enactment of the federal Tax Reform Act of 1976.

n. Nonrecognition of gain—installment sale contracts before October 20, 1980. No gain or loss is realized by the estate of a decedent-seller dying before October 20, 1980, when the purchaser in an installment sale contract inherits the seller's rights under the contract of sale. The merger of the asset with the liability is considered to be a nontaxable transfer. Therefore, any unreported gain from the installment sale contract is not subject to income tax when there is a merger of the asset with the liability. See Senate Finance Committee Report to P.L. 96-471.

o. Recognition of gain—installment sale contracts after October 19, 1980. Effective for estates of decedents dying after October 19, 1980, Section 3 of Public Law 96-471 (Installment Sales Revision Act of 1980) provides for the recognition of the remaining gain on installment sales contracts when the debtor inherits the obligation and thereby causes a merger of the asset with the liability. The rule after October 19, 1980, is if, as a result of the death of the holder of an installment sale obligation (usually the seller), the installment sale obligation is transferred to the debtor (usually the purchaser); or, if the installment sale obligation is canceled either as a result of the holder's death or by the personal representative of the holder's estate, the remaining gain from the installment sale contract not previously reported is recognized by the holder's estate, as if the remaining balance due had been immediately paid in full. The merger of the asset with the debt is treated as a taxable transfer by the estate of the holder (seller) of the obligation and is income in respect of a decedent realized by the holder's estate.

If the obligation was held by a person other than the seller, such as a trust, the cancellation of the obligation will be treated by that person as a taxable transfer immediately after the seller's death. In the absence of some act of canceling the obligation, such as by distribution or notation which results in cancellation under Iowa Code chapter 554 (Uniform Commercial Code), the disposition is considered to occur no later than the time the period of administration of the estate is ended. See Senate Committee Report to P.L. 96-471.

For gain recognition purposes, if the seller and the debtor were related parties, the value of the installment contract is considered to be not less than full face value, regardless of its value for Iowa inheritance tax or federal estate tax purposes. A related party includes, but is not limited to, the spouse, child (including an adopted child), grandchild, or parent of the seller; an estate in which the seller is a beneficiary; a partnership in which the seller is a partner; a corporation in which the seller owns 50 percent or more of the stock; and a trust where the seller is a beneficiary or is treated as the owner.

If the debtor inherits the obligation to pay or another share of the estate, the personal representative of the holder's estate must set off the contract of sale to the debtor when satisfying the debtor's share of the estate if the debtor's share of estate equals or exceeds the face value of the contract. In this case, the entire contract is canceled and all of the unreported gain is income in respect of a decedent to the

estate. If the debtor's share of the estate is less than the face value of the contract of sale, the contract of sale is canceled only to the extent of the debtor's share of the estate and only a like percentage of the unreported gain is considered income in respect of a decedent received immediately by the estate. See Iowa Code section 633.471 for the right of retainer and setoff. *In re Estate of Ferris,* 234 Iowa 960, 14 N.W.2d 889 (1944).

p. Nonresident aliens—sales of Iowa real estate. Nonresident aliens and estates and trusts with a situs outside the United States must include the gain from the sale or exchange of Iowa real estate as taxable income, even though the real estate was not effectively connected with a trade or business carried on in the United States. See Public Law 96-499. Any gain paid or distributed to a nonresident alien or an estate or trust with a situs outside the United States is subject to Iowa income composite tax, unless the gain has been previously accumulated and any tax due paid. Paragraph 700.4(9)*"d"* and 701—Chapter 405 contain more information on the requirement to pay Iowa composite tax on distributions to nonresident beneficiaries and individuals.

q. Miscellaneous income. Miscellaneous income is an inclusive term. It includes those items of income that are subject to Iowa income tax under Iowa Code section 422.6 which are not classified as dividends, interest, rent and royalties, income from partnerships and other fiduciaries, business or farm income and gain or loss from the sale or exchange of assets. Examples of miscellaneous income include, but are not limited to: wages and salaries earned by the decedent which are unpaid at death; federal income tax refunds, if the refund was deducted from an Iowa income tax return; and distributions to the estate from an employee's pension or retirement plan, if subject to Iowa income tax.

r. Grantor trusts. If the income of a trust is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679, the grantor of the trust or other person specified in the trust instrument, and not the trust, is considered the owner of the income. This income is properly reportable on the Iowa individual income tax return of the grantor or other individual treated as the owner. The fiduciary income tax return of a grantor trust is an informational return only. Items of income, deductions and credits of a grantor trust should be reported on a separate statement attached to the fiduciary return of income. See federal regulation Section 1.671-4. The taxable year of a grantor trust must be the same as the taxable year of the grantor, or of the other individual considered the owner of the income for tax purposes. *William Scheft,* 59 T.C. 428. Examples of grantor trusts are, but not limited to: trusts where the grantor or a nonadverse party has the power to revoke the trust or to return the corpus to the grantor; trusts where the grantor or a nonadverse party has the power to distribute income to or for the benefit of the grantor or the grantor's spouse; and trusts where the grantor has retained a reversionary interest in the trust, within specified time limits. See federal regulation Section 1.671-1.

s. "Equity trusts"—assignment of future wages and salaries. The assignment of future wages, salaries or other compensation for future services by a grantor to a trust (commonly called "equity" or "family estate" trust) does not shift the tax burden on this income from the grantor to the trust. The trust is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679. The income of the trust is to be reported by the grantor on an Iowa individual income tax return. *Lucas v. Earl,* 281 U.S. 111, 74 L.Ed. 731, 50 S.Ct. 241 (1930); *Vnuk v. Commissioner,* 621 F.2d 1318 (8th CA 1980); Revenue Ruling 75-257, 2 C.B. 251 (1975); *In re August Erling, Jr., et al.,* Director of Revenue decision, Docket No. 77-237-2C-A (1979).

t. Adjustments to federal taxable income. Iowa Code section 422.4(16) provides that the Iowa taxable income of estates and trusts is federal taxable income, without the deduction for the personal exemption, subject to the specific adjustments set forth in Iowa Code section 422.7 and the modifications relating to federal and state income tax specified in Iowa Code section 422.9. The modifications have these results:

(1) Federal income tax on the income of Iowa situs estates and trusts is deductible for Iowa income tax purposes in the year paid or accrued depending on the method of accounting.

(2) Federal income tax owed by Iowa resident decedents at the time of death is a deduction against estate income in the year paid.

(3) The federal income tax deduction allowable for estates and trusts with a situs outside Iowa is the same as the deduction allowed for an estate or trust with a situs in Iowa.

(4) Federal income tax owed by a nonresident decedent at the time of death may be deducted the same as a deduction allowed for an Iowa resident decedent. See 701—paragraph 303.3(4)*"b"* for the federal income tax deduction for nonresident individuals.

(5) Iowa income tax paid by the estate is not a deduction in computing Iowa taxable income.

(6) The federal exemption allowed to estates and trusts under 26 U.S.C. Section 642(b), that is, $600 for an estate, $300 for simple trust and $100 for a complex trust, is not deductible for Iowa income tax purposes.

(7) Interest and dividends from federal securities, but not capital gain or loss, is exempt from Iowa income tax and, therefore, is not part of the Iowa taxable income of estates and trusts.

(8) Interest and dividends from securities of a state and its political subdivisions and from foreign securities are included in Iowa taxable income in the year received, regardless of whether such interest and dividends are exempt from federal income tax. However, see 701—302.3(422) and 700.8(7)*"e"* for the exemption for certain bonds issued by the state of Iowa and its political subdivisions which are not included in Iowa taxable income.

(9) See 700.8(7)*"m"* for the includability of the gain for sales or exchanges before August 6, 1997, excluded by 26 U.S.C. Section 641(c), in the Iowa taxable income of a trust.

(10) See 701—paragraph 900.5(12)*"b"* for the inheritance tax exemption for the portion of an employee's pension or retirement plan subject to Iowa income tax.

700.8(8) *Deductions from gross income.*

a. In general. The deductions allowable in computing taxable income of estates and trusts are generally those relating to a trade or business and the expenses attributable to investment income. The important distinction between the deductions allowable in computing federal adjusted gross income and itemized deductions for individual income tax has only limited application in determining the taxable income of estates and trusts. Many deductions in computing the taxable income of an individual have no application to the deductions allowable in computing the taxable income of an estate or trust, due to the nature of estates and trusts and the sources of their income. For example, medical expense and moving expense deductions are applicable only to individuals, but taxes and interest expense can be incurred by both individuals and estates and trusts. Also the deduction for distribution to beneficiaries has no application to individual income tax.

b. Interest expense. Interest paid on obligations secured by property subject to the personal representative or trustee's right of possession is a deduction from gross income in the year paid. Interest on debts or charges which the personal representative or trustee is obligated to pay is also a deduction against gross income in the year paid. Interest on obligations secured by property, not subject to the personal representative's right of possession, is not deductible from the gross income of the estate, but is a deduction for the person succeeding to the encumbered property. No distinction is made between business and nonbusiness interest. See Iowa Code section 633.278 (probate code) for circumstances when the personal representative of the decedent's estate is required to pay the debt and interest on encumbered property, even though the property is not subject to the personal representative's right of possession. *J.S. Dean,* 35 T.C. 1083 (1961); Revenue Ruling 57-481, 2 C.B. 48 (1957).

c. Taxes. The taxes deductible against the gross income of an estate or trust are limited to the taxes deductible for individual income tax purposes under 26 U.S.C. Section 164, subject to the adjustments specified in Iowa Code section 422.9 relating to federal and state income taxes. Real estate and personal property taxes, including the taxes due, but unpaid at death, are only deductible by the estate on the decedent's property which is subject to the personal representative's right of possession. Federal income tax on the income of an estate or trust and federal income tax owing by an Iowa decedent at the time of death, including the federal income tax owing on the decedent's final return for the year of death, are deductible by the estate or trust in the year paid. For tax years on or after January 1, 1982, the federal income tax deduction attributable to Iowa by nonresidents of Iowa shall be the same deduction as is available for resident taxpayers. See 701—subrule 303.3(4) and Iowa Code section 422.5(1)*"j."* Examples of taxes not deductible include, but are not limited to: federal estate tax (except federal estate tax paid on income in respect of a decedent); Iowa income and inheritance tax; federal gift taxes; and special assessments increasing the value of property. See 26 U.S.C. Section 275.

d. Depreciation and depletion—allocation. If the personal representative of a decedent's estate has the right to the possession of property eligible for the depreciation allowance, the depreciation is a deduction from the estate's gross income when the income for the taxable year is accumulated by the estate. If all or part of the income for the year is distributed to the beneficiaries, the deduction for depreciation is apportioned between the estate and the beneficiaries on the basis of the income allocated to each. In the case of an estate, the deduction for depreciation follows the income.

The same depreciation rules apply to simple and complex trusts, with the exception that if the trustee has the right to maintain a reserve for depreciation, and in fact does so, the deduction for depreciation is allocated to the trust to the extent of the reserve maintained, regardless of whether the income is accumulated or distributed. See 26 U.S.C. Section 167, federal regulation 1.167 H-1(b); Revenue Ruling 74-530, 2 C.B. 188 (1974).

The rules governing the allowance for depreciation are also the rules to be applied to the allowance for depletion under 26 U.S.C. Section 611.

e. The charitable deduction. The charitable deduction allowed estates and trusts under 26 U.S.C. Section 642(c) is not subject to the percentage of income limitation applicable to individual taxpayers under 26 U.S.C. Section 170(b). The allowable deduction is governed by the terms of the will or trust instrument, which can provide for unlimited payments for charitable purposes. However, an unused charitable contribution carryover of the decedent remaining after the decedent's individual income tax liability for the year of death is determined is not available to the estate. The unused carryover terminates at death, except to the extent it may be used by the surviving spouse. See federal regulation Section 1.170A-10(d)(4)(iii). The deduction is limited to payments of gross income or amounts permanently set aside for charitable uses. A simple pecuniary bequest to charity in the decedent's will does not qualify for the charitable deduction from the estate's income. It is a payment from the corpus of the estate. *Frank Trust of 1931,* 145 F.2d 411 (3rd CA 1949). However, the pecuniary bequest to charity is exempt from the Iowa inheritance tax under Iowa Code section 450.4 if it meets the exemption requirements.

f. Other deductions. The category of other deductions includes those deductions allowable in computing taxable income not receiving special itemized treatment on the Iowa fiduciary return of income. The most common kind of other deductions is the expense of administration of an estate or trust paid during the taxable year. Expenses of administration include, but are not limited to: a reasonable fee and the necessary expenses of the attorney employed by the personal representative of an estate or the trustee of a trust; a reasonable fee and the necessary expenses of the personal representative of an estate or the trustee of a trust; accounting fees; court costs; and interest paid on federal estate tax during an extension of time to pay. However, administration expenses are subject to the no double deduction rule. See 26 U.S.C. Section 642(g) and 700.8(8)*"g."* Salaries or fees paid during the taxable year for the management of a farm or business are expenses directly attributable to the production of a specific kind of income and are more properly deductible on the farm schedule F or the business schedule C.

g. The no double deduction rule. Expenses of administration, certain debts of the decedent like medical expenses incurred prior to death and losses during the period of administration are proper deductions in computing both the taxable income of an estate or trust (or on the decedent's individual return in case of medical expenses) and the taxable estate for federal estate tax purposes under 26 U.S.C. Sections 2053 and 2054. The no double deduction rule only applies to trusts when the trust assets are included for federal estate tax purposes. 26 U.S.C. Section 642(g) prohibits the double deduction of those items which qualify as deductions for both taxes. To prevent the double deduction, it is a prerequisite for the allowance of the deduction for income tax purposes that a statement be filed with the fiduciary return of income waiving the right to claim the item or portion of the item as a deduction on the federal estate tax return. The waiver once filed with the fiduciary return of income is irrevocable. However, unless the waiver has been filed, the decision to claim the deduction or portion of the deduction on the federal estate tax return can be changed anytime prior to the time the item or portion of the item is finally allowed for federal estate tax purposes.

The waiver requirement has no application to estates and trusts not required to file a federal estate tax return.

The no double deduction rule has no application to deductions in respect of a decedent, such as deductions relating to trade or business expenses, interest, taxes, expenses for the production of income and the allowance for depletion, which are deductible both for income tax purposes and federal estate tax purposes. See 26 U.S.C. Section 691(b) and 26 CFR Section 1.691(b)-1 for what constitutes deductions in respect of a decedent.

The no double deduction rule does not apply to the deduction of an item for Iowa inheritance tax purposes. Items are deductible or not in computing the taxable shares for Iowa inheritance tax purposes by reference alone to Iowa Code chapter 450.

Assuming an item is otherwise deductible for income and inheritance tax purposes, the no double deduction rule has the following applications for Iowa income and inheritance tax:

1. Estates and trusts not required to file a federal estate tax return can claim the item as a deduction on both the Iowa inheritance tax return and the Iowa fiduciary income tax return.

2. Estates and trusts required to file a federal estate tax return can claim the item as a deduction on the Iowa inheritance tax return. In addition, the same item or portion of the item is a deduction on the Iowa fiduciary income tax return if the item or portion of the item is not claimed as a deduction on the federal estate tax return. If it is claimed as a deduction on the federal estate tax return, it is not deductible on the Iowa fiduciary income tax return.

3. For tax years ending on or after July 1, 2015, estates or trusts required to file a federal estate tax return can claim administrative expenses as a deduction on the Iowa fiduciary income tax return, regardless of whether the item or a portion of the item was claimed on the federal estate tax return.

This paragraph applies both to estates and trusts with a situs within and without Iowa.

h. The net operating loss deduction. Subject to the modifications specified in federal regulation Section 1.642(d)-1, an estate or trust is allowed a deduction for net operating loss which is computed in the same manner as the net operating loss deduction allowable to individual taxpayers. The modification especially applicable to estates and trusts is: The charitable deduction allowable under 26 U.S.C. Section 642(C) is disregarded. See federal regulation Section 1.642(d)-1.

The rule that nonbusiness deductions are only taken into account to the extent of nonbusiness income applies equally to estates and trusts and individual taxpayers. Attorney fees and the fees of the trustee or personal representative, without a showing that these administrative expenses were incurred in carrying on the decedent's or grantor's trade or business, are a nonbusiness deduction. *Refling v. Commissioner,* 47 F.2d 895 (8th CA 1930). Therefore, any excess fees over income are not available for a carryback to a prior taxable year or a carryforward to a future taxable year. *Mary C. Westphal,* 37 T.C. 340 (1961). However, see 700.8(9)*"a"* for the special rule on excess deductions in the year the estate or trust terminates. Net operating losses are available to the estate or trust and can be carried back for distribution to a beneficiary, with the exception that any unused loss must be distributed to the beneficiaries in the year the estate or trust terminates.

Estates and trusts with a situs outside Iowa are allowed a deduction only for a net operating loss attributable to a trade or business activity carried on in the state of Iowa. In the event the trade or business activity giving rise to the loss is carried on both in Iowa and another state, the net operating loss deduction for Iowa income tax purposes must be prorated on the ratio of the Iowa gross receipts from the trade or business to the total gross receipts from the trade or business. See 701—subrule 302.18(2) for the computation of the net operating loss deduction of a nonresident decedent.

i. Capital loss deduction. The capital loss deduction of an estate or trust is computed in the same manner as the capital loss deduction for individual taxpayers. However, it is a deduction only for the estate or trust and is not distributable to a beneficiary, except in the year the estate or trust terminates. *Grey v. Commissioner,* 118 F.2d 153, 141 ALR 1113 (7th CA 1941); *Jones v. Whittington,* 194 F.2d 812 (10th CA 1952). Capital losses do not enter into the computation of the deduction for income required to be distributed currently to beneficiaries. During the period of administration of the estate or trust, capital losses can be used only to offset capital gain for simple trusts required to distribute income currently. However, beneficiaries may derive immediate benefit from capital losses when capital gain is required or permitted to be distributed to beneficiaries prior to closure of the estate or trust, since the losses can be used to offset gain before distribution.

j. The distribution deduction. Estates and trusts are allowed to deduct the amounts of income required to be distributed currently and also other amounts properly paid, credited or required to be distributed to the extent of the distributable net income for the year. For income tax purposes, an estate of a decedent is treated as a complex trust, because normally the personal representative of an estate has the discretion whether or not to distribute current income. Therefore, most distributions of income from a decedent's estate fall under the category of "other amounts properly paid, credited or required to be distributed." However, see *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978) for circumstances when the personal representative of an estate is required to distribute current income during the period of administration to a life tenant (the surviving spouse in this case).

The distribution deduction allowed is limited to the distributable net income of the estate or trust for the taxable year. If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made to a beneficiary of a complex trust in excess of the distributable net income for the taxable year may or may not be includable in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. Sections 665 through 668.

Estates and trusts with tax years beginning on or after August 5, 1997, may elect to treat distributions made within 65 days of the end of the tax year as having been made in the tax year of the estate or trust. If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made to a beneficiary of a complex trust in excess of the distributable net income for the taxable year may or may not be includable in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. Sections 665 through 668. Effective for distributions made by domestic trusts in tax years beginning after August 5, 1997, there is a repeal of the throwback rules found in 26 U.S.C. Sections 665 through 668. However, the repeal of the throwback rules does not apply to trusts created before March 1, 1984, foreign trusts, or domestic trusts that were once treated as foreign trusts, except as provided by federal regulations.

Income distributed to a beneficiary of an estate or trust retains the same character in the hands of the beneficiary as it had in the estate or trust, with the exception of unused capital loss distributed on closure to a corporation, in which case the loss is treated as a short-term loss, regardless of its character in the estate or trust. See federal regulation Section 1.642(h)-1(g). In addition, unless the will or trust instrument specifically provides otherwise, a distribution to beneficiaries is considered to be a proportionate distribution of the different kinds of income composing the distributable net income of the estate or trust. See 26 U.S.C. Section 662.2(b) and federal regulation Section 1.662(b)-1. The same character and proportionate distribution rule is illustrated by the following:

EXAMPLE:

Decedent A, a resident of Iowa, died February 15, 1997. Under the terms of the will, all the decedent's property was devised in equal shares to beneficiary B, a resident of Phoenix, Arizona, and beneficiary C, a resident of Cedar Rapids, Iowa. The estate adopted a calendar year as its taxable year. For calendar year 1997, the estate had distributable net income of $50,000, which is composed of:

Interest income	$10,000
Dividend income	5,000
Net Iowa farm income	35,000
Total	$50,000

On December 20, 1997, the estate distributed $12,500 to beneficiary B, and $12,500 to beneficiary C. Beneficiaries B and C have received a distribution for 1997 as follows:

Beneficiary B		Beneficiary C	
Interest income	$2,500	Interest income	$2,500
Dividends	1,250	Dividends	1,250
Farm income	8,750	Farm income	8,750
Total	$12,500	Total	$12,500

The estate is entitled to a deduction of $25,000 against gross income in 1997 for the distribution to beneficiaries B and C and owes Iowa income tax on the $25,000 income retained in the estate. Since the interest income of the estate is 20 percent of the distributable net income, 20 percent of the distribution to beneficiaries B and C is considered interest income. Likewise, 10 percent of the estate's distributable net income is dividends and 70 percent farm income. The distribution to B and C consists of a corresponding percentage of dividends and farm income. Beneficiary C, a resident of Iowa, must report the entire distribution of $12,500 on a 1997 Iowa individual income tax return. Beneficiary B, a resident of Arizona, is only required to report the farm income portion of the distribution ($8,750) on a 1997 nonresident individual income tax return, because dividends and interest are income from intangible personal property and were not derived from a business, trade, profession or occupation carried on within Iowa by the nonresident. See 701—subrule 302.16(5).

k. The dividend exclusion. Estates and trusts are eligible for the dividend exclusion allowed individual taxpayers under 26 U.S.C. Section 116 (the Iowa exclusion is $100 for 1981). The exclusion is allocated to the estate or trust if the dividend income for the taxable year is accumulated. The dividend exclusion is allocated to the beneficiaries when all of the distributable net income for the taxable year is distributed. The distribution must not be diminished by the exclusion. The dividend exclusion is then available to the beneficiaries after the dividends distributed are added to any other dividends received by the beneficiaries during the taxable year. If there is only a partial distribution of the distributable net income of the estate or trust for the taxable year, the dividend exclusion must be prorated between the beneficiaries and the estate or trust on the basis of the percentage of the distributable net income accumulated by the estate or trust and the percentage distributed to the beneficiaries. A partial distribution of the dividends and exclusion is to be reported and used by the beneficiaries for income tax purposes in the same manner as the full distribution of dividends. See federal regulation Sections 1.116-1(a) and 1.661(c)-1.

l. The capital gains deduction. 26 U.S.C. Section 1202(b) provides that an estate or trust is allowed a deduction for net capital gain received during the taxable year. Except for the requirement of allocation between the beneficiaries and the estate or trust, the deduction is computed in the same manner as the net capital gain deduction allowed individuals. See federal regulation Section 1.1202-1 (b). If the net capital gain is allocated to corpus, the estate or trust is entitled to the deduction. If the will or trust instrument requires capital gain to be distributed to the beneficiaries or if the trustee or personal representative of a decedent's estate is authorized to allocate capital gain to income and distributes the capital gain, then the net capital gain deduction is allocated to the beneficiaries and is not a deduction to the estate or trust. The gain distributed must not be diminished by the deduction. It must first be combined with any other capital gains and losses of the beneficiary prior to determining whether the net capital gain deduction is applicable for the beneficiary's taxable year.

If the net capital gain for the taxable year is partially allocated to corpus and partially distributed, then the net capital gain deduction is available to the beneficiaries only on the gain distributed and to the estate or trust only on the gain accumulated. A partial distribution of capital gain is treated for purposes of a beneficiary's income tax liability in the same manner as a full distribution of capital gain.

m. The Iowa throwback rule. Iowa Code section 422.6 allows a trust beneficiary receiving an accumulation distribution subject to the throwback rules under 26 U.S.C. Sections 665 through 668 a credit against the beneficiary's income tax liability for the Iowa income tax paid by the trust on the accumulated income distributed. The Iowa income tax paid by the trust on the accumulated income distributed is deemed distributed to the trust beneficiary, without interest, and is a credit for the year of distribution against the portion of the Iowa income tax liability of the beneficiary which is attributable to

the accumulated distribution. The accumulated distribution must be adjusted by the beneficiary to reflect income subject to Iowa income tax. No refund is allowed the trust for the Iowa income tax deemed distributed to the beneficiary. The beneficiary is not allowed a refund if the tax distributed is in excess of the income tax liability attributable to the distribution. Effective for distributions made by domestic trusts in tax years beginning after August 5, 1997, there is a repeal of the throwback rules found in 26 U.S.C. Sections 665 through 668. However, the repeal of the throwback rules does not apply to trusts created before March 1, 1984, foreign trusts, or domestic trusts that were once treated as foreign trusts, except as provided by federal regulations.

n. Federal estate tax paid on income in respect of a decedent. For Iowa income tax purposes, Iowa Code section 422.7 makes no provision for adjusting the deduction for federal estate tax paid when the income in respect of a decedent includes interest from federal securities. Therefore, the federal estate tax paid on interest from federal securities, which is classified as income in respect of a decedent under 26 U.S.C. Section 691(a), is a deduction for Iowa income tax purposes in the taxable year the interest is received. However, interest and dividends from securities of a state or political subdivision, which are exempt from federal income tax, do not constitute the kind of income in respect of a decedent on which the deduction is computed. Since the deduction under 26 U.S.C. Section 691(c) does not apply to income exempt from federal income tax, there is no deduction on the Iowa return for the federal estate tax paid on the exempt interest, even though under Iowa Code section 422.7 this interest is subject to Iowa income tax.

The deduction allowable in any taxable year is limited to a percentage of the total federal estate tax deduction which is determined by the ratio of income in respect of a decedent received for the year to the total amount of the net income in respect of a decedent on which federal estate tax was paid. See 26 U.S.C. Section 691(c) and federal regulation Section 1.691(c)-1 for the computation of the deduction.

700.8(9) *The final return—special considerations.*

a. General rule. In the year of closure all income received by the estate or trust is considered "other amounts properly paid or credited or required to be distributed" and must be distributed to the beneficiaries according to the terms of the governing instrument. Rev. Ruling 58-423, 2 C.B. 151 (1958). Dividends and capital gains received during the year of closure must be distributed without being diminished by the net capital gain deduction or by the dividend exclusion. See federal regulation Section 1.643(a)-3(d). 26 U.S.C. Section 642(h) provides for an exception to the general rule that net operating and capital losses are only available to the taxpayer incurring the loss. Therefore, in the year of closure, any capital loss and net operating loss carryover that remains unused by the estate or trust is passed through the estate or trust and is allowed as a deduction to the beneficiaries succeeding to the property and may be applied by carrying back the losses, but such losses cannot be carried forward. See federal regulation Section 1.642(h)-1.

If the estate or trust in the year of termination has incurred deductions in excess of gross income which do not qualify for treatment as a net operating or capital loss, such as administration expenses, the excess deductions are passed through the estate or trust and are available to the beneficiaries succeeding to the property. They are available only for the year the estate or trust terminates and only as an itemized deduction in the case of an individual beneficiary. See Revenue Ruling 58-191 1 C.B. 149 (1958). Excess deductions also include any unused net operating loss carryover, if the year the estate or trust terminates is the last carryforward year for the net operating loss. See federal regulation Section 1-642(h)-2(b).

b. Exception to the general rule. If in the year of termination an Iowa ancillary estate makes the required distribution of its income to the primary estate which is not being terminated, instead of to the beneficiaries of the estate, it is proper in the year of closure to treat the income as if it were accumulated by the Iowa ancillary estate. Permitting Iowa income tax to be paid on the income in this special case, in effect, allows the distribution to the primary estate to be made on a tax-paid basis. This exception to the general rule relieves the primary estate from the obligation of filing a second fiduciary return, which it would be required to do except for this special rule.

700.8(10) *Computation of the tax due.*

a. In general. The tax due on the taxable income of an estate or trust is computed by using the same tax rate schedule used for computing the individual income tax liability. The provisions of the

Iowa Code relating to the maximum net income of an individual before a tax liability is incurred have no application to the tax liability of an estate or trust. The taxable income of a short taxable year is not required to be annualized for the purpose of computing the tax liability. The tax due cannot be paid in installments. It must be paid in full within the time prescribed by law.

b. Alternative minimum tax. Special rules for estates and trusts. The sum of the items of tax preference determined under 26 U.S.C. Section 57 shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each under the provisions of federal income tax regulation Section 1.58-3. The minimum taxable income exemption of $17,500 allowable to an estate or trust shall be reduced to an amount which bears the same ratio to $17,500 that the sum of the items of tax preference apportioned to the estate or trust bears to the full sum of the items of tax preference before apportionment. See federal income tax regulation Section 1.58-1(d). See rule 701—301.6(422) for the computation of the Iowa alternative minimum tax.

700.8(11) *Credits against the tax.*

a. The personal exemption credit. The estate of a decedent and a trust, whether simple or complex, are allowed the same credit against the tax as the credit allowed an individual taxpayer, that is currently $40. The personal exemption credit is not prorated for short taxable years. The federal exemption allowed estates and trusts under 26 U.S.C. Section 642(b), in lieu of the personal exemption for individuals, has no application to Iowa income tax.

b. Credit for tax paid to another state or foreign country. Iowa Code section 422.8 grants Iowa situs trusts and estates of Iowa resident decedents, which have income derived from sources in another state or foreign country, a credit against the Iowa tax for the income tax paid to the state or foreign country where the income was derived. The credit is computed in the same manner as a full-year resident under rules 701—304.6(422) and 701—304.7(422). Foreign situs trusts and estates of foreign decedents are not allowed a credit against the Iowa tax for the income tax paid another state or foreign country on Iowa source income. Rule 701—304.6(422) as applied to an Iowa situs trust or estate is illustrated by the following example:

Decedent A died a resident of Webster City, Iowa, on February 15. Decedent A at the time of death owned income-producing property both in Iowa and the state of Missouri. For the short taxable year ending December 31, A's estate had the following income and expenses:

Interest	$ 5,000.00
Dividends	7,500.00
Iowa farm income	20,000.00
Missouri farm income	10,000.00
Iowa gross income	$ 42,500.00
Less allowable deductions	8,000.00
Iowa taxable income	$ 34,500.00
Iowa computed tax	$2,587.87
Less personal credit	40.00
Tax subject to credit for foreign taxes paid	$2,547.87
Tentative credit for tax paid to Missouri	$ 413.00
Maximum credit	$ 604.20
Lesser of tentative credit or maximum credit	413.00
Iowa tax due	$2,134.87

A's estate paid $413.00 income tax to the state of Missouri on the $10,000 Missouri farm income. This is A's tentative credit.

The maximum credit on the foreign source income is $604.20 computed as follows:

$$\frac{\text{Foreign income included in gross income } \$10{,}000}{\text{Total Iowa gross income } \$42{,}500} \times \$2{,}547.87^{*} = \$604.20$$

*$2,547.87 is the Iowa computed tax less the $40.00 personal credit.

The allowable out-of-state tax credit is $413.00, because the $413.00 of income tax paid to Missouri (tentative credit) is less than the maximum credit of $604.20. If the Missouri tax paid had been greater than the maximum credit, the allowable credit would have been the maximum credit.

c. Motor vehicle fuel tax credit. An estate or trust incurring Iowa motor vehicle fuel tax expense attributable to nonhighway uses may, in lieu of obtaining an Iowa motor vehicle fuel refund, claim as a credit against its Iowa income tax liability, the Iowa motor vehicle fuel taxes paid during the taxable year.

A copy of the Iowa motor vehicle fuel tax credit Form IA 4136 must be submitted with the fiduciary return of income to substantiate the claim for credit. Any credit in excess of the income tax due shall be refunded to the estate or trust, subject to the right of offset against other state taxes owing.

d. Nonresident/part-year resident credit. The nonresident/part-year resident credit is available for part-year trusts described in subrule 700.3(3) and trusts whose situs is outside Iowa. See rule 701—304.5(422) for the computation of the nonresident/part-year resident credit allowed for individuals who are either part-year residents of Iowa or nonresidents of Iowa.

e. Other tax credits. All other tax credits set forth in Iowa Code chapter 422, division II, are also available for any estate or trust that meets the criteria for claiming these tax credits. For tax years beginning on or after January 1, 2013, estates and trusts with a situs in Iowa which are shareholders in S corporations which carry on business within and without Iowa can take advantage of the apportionment provisions for S corporation income set forth in 701—Chapter 403. The criteria to determine whether the S corporation is carrying on business within and without Iowa is set forth in 701—subrule 503.1(4).

This rule is intended to implement Iowa Code sections 422.3 to 422.12, 422.14, 422.23, and 633.471 and chapter 452A.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1102C**, IAB 10/16/13, effective 11/20/13; **ARC 2661C**, IAB 8/3/16, effective 9/7/16; **ARC 6029C**, IAB 11/3/21, effective 12/8/21; Editorial change: IAC Supplement 11/2/22; **ARC 6900C**, IAB 2/22/23, effective 3/29/23; Editorial change: IAC Supplement 10/18/23]

701—700.9(422) Audits, assessments and refunds. Rules 701—305.1(422) to 701—305.3(422) governing the audit of individual income tax returns, the assessment for tax or additional tax due, and the refund of excessive tax paid shall also govern the audit of the fiduciary income tax return and the assessment and refund of fiduciary income tax.

This rule is intended to implement Iowa Code sections 422.16, 422.25, 422.30, 422.70 and 422.73.

[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—700.10(422) The income tax certificate of acquittance.

700.10(1) *In general.* Iowa Code section 422.27 requires the income tax obligation of an estate or trust to be paid prior to approval of the final report by the court. Iowa Code section 422.27 refers only to the report of the executor, administrator or trustee. In addition, the statute makes reference only to a trustee's final report that is approved by a court. A trust that does not report to and is not subject to the supervision of a court is not required to obtain a certificate of acquittance. However, the statute's reference to a trustee who must report to the court would also include, but is not limited to, a referee in partition and the trustee of the estate of an individual bankrupt under Chapter 7 or 11 of Title 11 of the United States Code. What constitutes a trust is a matter of the trust law of the state of situs.

700.10(2) *The application for certificate of acquittance.* The final fiduciary return of income serves as an application for an income tax certificate of acquittance. For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.

700.10(3) *Requirements for a certificate of acquittance.* The issuance of an income tax certificate of acquittance is dependent upon full payment of the income tax liability of the estate or trust for the period of administration. This includes the obligation to pay composite return tax on distributions of

nonresident beneficiaries' Iowa-source income from the estate or trust. In the case of an estate, the income tax liability of the decedent both for prior years and the year of death must be paid to the extent of the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's income tax liability according to the order of payment of an estate's debts and charges specified in Iowa Code section 633.425. If the probate property of the estate is insufficient to pay the decedent's income tax obligation in full, the department, in lieu of a certificate of acquittance, shall issue a certificate stating that the probate property is insufficient to pay the decedent's income tax liability and that the department does not object to the closure of the estate. In the event the decedent's income tax obligation is not paid in full, the closure of the decedent's estate does not release any other person who is liable to pay the decedent's income tax obligation.

700.10(4) *The extent of the certificate.* An income tax certificate of acquittance is a statement of the department certifying that all income taxes due from the estate or trust have been paid in full to the extent of the income and deductions reported to the department. The certificate fulfills the statutory requirements of Iowa Code section 422.27 and the Iowa income tax portion of the requirements of Iowa Code sections 633.477 and 633.479. Providing all other closure requirements are met, the certificate permits the closure of the estate or trust by the court. However, the certificate of acquittance is not a release of liability for any income tax or additional tax that may become due, such as the result of an audit by the Internal Revenue Service or because of additional income not reported. See 701—subrule 300.2(1) for the limitations on the period of time to conduct income tax audits.

700.10(5) *No income tax certificate of acquittance required—exception to general rule.* If all of the property included in the estate is held in joint tenancy with rights of survivorship by a husband and wife as the only joint tenants, then in this case the provisions of Iowa Code section 422.27, subsection 1, do not apply and an income tax certificate of acquittance from the department is not required.

This rule is intended to implement Iowa Code sections 422.27, 633.425, 633.477 and 633.479.

[Editorial change: IAC Supplement 11/2/22; **ARC 6900C**, IAB 2/22/23, effective 3/29/23; Editorial change: IAC Supplement 10/18/23]

701—700.11(422) Appeals to the director. The denial of a request for an income tax certificate of acquittance may be appealed. An appeal to the director must be in writing and must be made within 60 days of the denial. 701—Chapter 7 shall govern appeals to the director.

This rule is intended to implement Iowa Code chapter 17A and sections 421.60 and 422.28.

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TITLE X
INHERITANCE TAX

CHAPTER 900
INHERITANCE TAX

[Prior to 12/17/86, Revenue Department[730]]
[Prior to 11/2/22, see Revenue Department[701] Ch 86]

701—900.1(450) Administration.

900.1(1) *Definitions.* The following definitions cover Chapter 900.

"Administrator" means the administrator of the compliance division of the department of revenue.

"Child" means a biological or adopted issue entitled to inherit pursuant to Iowa Code chapter 633.

"Compliance division" is the administrative unit of the department created by the director to administer the inheritance and fiduciary income tax laws of the state.

"Department" means the department of revenue.

"Devise," when used as a verb, means to dispose of property, both real and personal, by a will.

"Director" means the director of revenue.

"Estate" means the real and personal property, tangible and intangible, of the decedent or a trust, that over time may change in form due to sale, reinvestment, or otherwise, and augmented by accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom. For the definitions of "gross estate" and "net estate" under this chapter, see those terms as referenced in this subrule.

"Executor" means any person appointed by the court to administer the estate of a testate decedent.

"Fiduciary" includes personal representative, executor, administrator, and trustee. This term includes both temporary and permanent fiduciaries appointed by the court to settle the decedent's probate estate and also the trustee of an inter vivos trust where the trust assets are part of the gross estate for inheritance tax purposes.

"Gross estate" as used for inheritance tax purposes as defined in Iowa Code section 450.2 includes all those items, or interests in property, passing by any method of transfer specified in Iowa Code section 450.3 without reduction for liabilities specified in Iowa Code section 450.12. The gross estate for tax purposes may not be the same as the estate for probate purposes. For example, property owned as joint tenants with right of survivorship, property transferred with a retained life use, gifts in excess of the annual gift tax exclusion set forth in Internal Revenue Code Section 2503(b) and within three years of death, transfers to take effect in possession or enjoyment at death, trust property, "pay on death" accounts, annuities, and certain retirement plans, are not part of the decedent's probate estate, but are includable in the decedent's gross estate for inheritance tax purposes. *In re Louden's Estate,* 249 Iowa 1393, 92 N.W.2d 409 (1958); *In re Sayres' Estate,* 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Toy's Estate,* 220 Iowa 825, 263 N.W. 501 (1935); *In re Mann's Estate,* 219 Iowa 597, 258 N.W. 904 (1935); *Matter of Bliven's Estate,* 236 N.W.2d 366 (Iowa 1975); *In re English's Estate,* 206 N.W.2d 305 (Iowa 1973).

Effective for estates of a decedent dying on or after July 1, 2003, property and any interest in or income from any of the estates and property, which pass from the decedent owner in any manner, are subject to tax if the passing interest is in one of the following: (1) real estate and tangible personal property located in Iowa regardless of whether the decedent was a resident of Iowa at death; and (2) intangible personal property owned by a decedent domiciled in Iowa.

"Gross share" means the total amount of property of an heir, beneficiary, surviving joint tenant, or transferee, without reduction of those items properly deductible in computing the net shares. The total of all gross shares is equal to the gross estate.

"Heir" includes any person, except the surviving spouse, who is entitled to property of the decedent under the statutes of intestate succession.

"Internal Revenue Code" means the Internal Revenue Code of 1954 as defined in Iowa Code section 422.3(5) and is to include the revisions to the Internal Revenue Code made in 1986 and all subsequent revisions.

"Intestate estate" means an estate in which the decedent did not have a will. Administration of such estates is governed by Iowa Code sections 633.227 through 633.230. Rules of inheritance for such estates are found in Iowa Code sections 633.211 through 633.226.

"Issue," for the purpose of intestate succession, means all lawful lineal descendants of a person, whether biological or adopted. For details regarding intestate succession, see Iowa Code sections 633.210 through 633.226. For details regarding partial intestate succession, see Iowa Code section 633.272.

"Net estate" means the gross estate less those items specified in Iowa Code section 450.12 as deductions in determining the net shares of property of each heir, beneficiary, surviving joint tenant, or transferee. *In re Estate of Waddington,* 201 N.W.2d 77 (Iowa 1972). The total of all net shares of an estate must equal the total of the net estate.

"Net share" means the gross share less the liabilities, if any, which are properly deductible from the gross share of an heir, beneficiary, surviving joint tenant, or transferee. The law of abatement of shares may be applicable for purposes of determining the net share subject to tax. See Iowa Code section 633.436; *In re Estate of Noe,* 195 N.W.2d 361 (Iowa 1972); *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978); *In re Estate of Duhme,* 267 N.W.2d 688 (Iowa 1978). However, see Iowa Code section 633.278 for property subject to a mortgage.

"Personal representative" shall have the same meaning as the term is defined in Iowa Code section 633.3(29) and shall also include trustees. For information regarding claims of a personal representative, see Iowa Code section 633.431.

"Probate" means the administration of an estate in which the decedent either had or did not have a will. Jurisdiction over the administration of such estates, among other matters, is by the district court sitting in probate. For further details on the subject matter and personal jurisdiction of the district court sitting in probate, see Iowa Code sections 633.10 through 633.21. For matters regarding the procedure in probate, see Iowa Code sections 633.33 through 633.53.

"Responsible party" is the person liable for the payment of tax under this chapter. See 701—900.2(450).

"Simultaneous deaths" occur when the death of two or more persons occurs at the same time or there is not sufficient evidence that the persons have died otherwise than simultaneously. For distribution of property in this situation, see Iowa Code sections 633.523 through 633.528.

"Stepchild" means the child of a person who was married to the decedent at the time of the decedent's death, or the child of a person to whom the decedent was married, which person died during the marriage of the decedent.

"Surviving spouse" means the legally recognized surviving wife or husband of the decedent.

"Tax" means the inheritance tax imposed by Iowa Code chapter 450.

"Taxpayer" means a person liable for the payment of the inheritance tax under Iowa Code section 450.5 and includes the executor or personal representative of an estate, the trustee or other fiduciary of property subject to inheritance tax, and includes each heir, beneficiary, surviving joint tenant, transferee, or other person becoming beneficially entitled to any property or interest therein by any method of transfer specified in Iowa Code section 450.3, as subject to inheritance tax with respect to any inheritance tax due on the respective shares of the property.

"Trustee" means the person or persons appointed as trustee by the instrument creating the trust or the person or persons appointed by the court to administer the trust.

"Trusts" means real or personal property that is legally held by a person or entity for the benefit of another. This includes, but may not be limited to, express trusts, trusts imposed by court order, trusts administered by the court, and testamentary trusts. Such trusts are subject to Iowa Code chapter 450, even in situations when the estate consists solely of trust property.

"Unknown heirs" means heirs to an estate in which the identities of the heirs or the place of residency of the heirs cannot be ascertained with reasonable certainty.

"Will" includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will. For information regarding mutual and contractual wills, see Iowa Code section 633.270.

900.1(2) *Delegation of authority.* The director delegates to the administrator, subject always to the supervision and review by the director, the authority to administer the Iowa inheritance tax. This delegated authority specifically includes, but is not limited to, the determination of the correct inheritance tax liability; making assessments against the taxpayer for additional inheritance tax due; authorizing refunds of excessive inheritance tax paid; issuing receipts for inheritance tax paid; executing releases of the inheritance tax lien; granting extension of time to file the inheritance tax return and pay the tax due; granting deferments to pay the inheritance tax on a property interest to take effect in possession or enjoyment at a future date; requesting or waiving the appraisal of property subject to the inheritance tax and the imposition of penalties for failure to timely file or pay the inheritance tax. The administrator may delegate the examination and audit of inheritance tax returns to the supervisors, examiners, agents, and any other employees or representatives of the department.

900.1(3) *Information deemed confidential.* Federal tax returns, federal return information, inheritance tax returns, and the books, records, documents, and accounts of any person, firm, or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the inheritance tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to confidentiality and disclosure of federal tax returns and federal return information.

900.1(4) *Information not confidential.* Copies of wills, the filing of an inheritance tax lien, release of a real estate lien, probate inventories, trust instruments, deeds and other documents which have been filed for public record are not deemed confidential by the department.

900.1(5) *Forms.* The final inheritance tax return, inheritance tax receipts, and forms for the audit, assessment, and refund of the inheritance tax shall be in such form as may be prescribed or approved by the director—see 701—8.3(17A).

900.1(6) *Safe deposit boxes and joint accounts.* Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner, or beneficiary. Additionally, effective July 1, 2005, there is no longer a requirement that all persons, banks, credit unions, and savings and loan associations notify the department of the balance in a joint account on the date of a deceased joint owner's death and the name and address of the surviving joint owner prior to permitting the withdrawal of funds from the joint account by a surviving joint owner.

This rule is intended to implement Iowa Code chapter 22 and Iowa Code sections 450.1 and 450.2 as amended by 2003 Iowa Acts, chapter 95, sections 1 and 2, and sections 421.2, 450.67, 450.68, 450.94, 450.97 and 450B.7.

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701—900.2(450) Inheritance tax returns and payment of tax.

900.2(1) *Filing of an inheritance tax return.* Estates meeting certain requirements must file an inheritance tax return, and it is the duty of certain persons associated with the estate to file the inheritance tax return as follows:

a. Mandatory filing. The inheritance tax return provided for in subrule 900.2(2) must be filed if the gross share of any heir, beneficiary, transferee, or surviving joint tenant exceeds the exemptions allowable in Iowa Code sections 450.4 and 450.9. In addition, if Iowa real estate is includable in the gross estate, the return must be filed, even if no tax is due, prior to the issuance of a no tax due certificate.

Effective July 1, 2001, an estate is required to file an Iowa inheritance tax return if the entire estate of the decedent exceeds the sum of $25,000 after deducting the liabilities of the estate.

b. Who must file. If the decedent's estate is probated as provided in Iowa Code chapter 633 or administered as provided in Iowa Code section 450.22, the personal representative of the estate is charged with the duty of filing the return with the department. If the personal representative of the estate fails to file the return or if the estate is not probated, it shall be the duty of those heirs, beneficiaries, transferees, surviving joint tenants, and trustees who receive shares in excess of the allowable exemptions or shares

which are taxable in whole or in part, without the deduction of liabilities, and those individuals in receipt of the decedent's property are either jointly or severally to file the return with the department.

c. Who is not required to file a return for estates of decedents dying on or after July 1, 2004.

(1) Effective for estates with decedents dying on or after July 1, 2004, if an estate has no Iowa inheritance tax due and there is no obligation for the estate to file a federal estate tax return, even though real estate is involved, an Iowa inheritance tax return need not be filed if at least one of the following situations is applicable:

1. All estate assets are held solely in joint tenancy with right of survivorship between husband and wife alone; or

2. All estate assets are held solely in joint tenancy with right of survivorship, and not as tenants in common, solely between the decedent and individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax on shares received from a decedent based on the individuals' relationship to the decedent. This numbered paragraph does not apply to a jointly held interest in an asset that passes to both an individual listed in Iowa Code section 450.9 and any other individual not listed in Iowa Code section 450.9, including that individual's spouse. See subparagraph 900.2(1)*"c"*(2) for a list of individuals who are statutorily exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9; or

3. All assets are passing by beneficiary designation pursuant to a trust and are intended to pass the decedent's property at death or through a nonprobate transfer solely to individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax on shares received from a decedent based on their relationship to the decedent. This numbered paragraph does not apply to a jointly held interest in an asset that passes to both an individual listed in Iowa Code section 450.9 and any other individual not listed in Iowa Code section 450.9, including that individual's spouse. See subparagraph 900.2(1)*"c"*(2) for a list of individuals who are statutorily exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9; or

4. All estate assets are passed by will or intestate succession as set forth in Iowa Code chapter 633, division IV, and beginning with section 633.210, solely to individuals who are statutorily exempt from Iowa inheritance tax as set forth below in subparagraph 900.2(1)*"c"*(2); or

5. For estates of decedents dying on or after July 1, 2007, if the total aggregate value of all the tangible personal property in the estate is $5,000 or less and in-kind distributions are made. Any in-kind distribution of personal property is exempt from inheritance tax when the total aggregate value of the tangible personal property in the estate is $5,000 or less. If the total aggregate amount of tangible personal property is greater than $5,000, then the exemption for in-kind distributions of tangible personal property does not apply. See Iowa Code section 450.4(7); see also Iowa Code section 633.276 for a description of tangible personal property that qualifies.

EXAMPLE 1: The total aggregate value of the tangible personal property in the estate is $3,000. The executor makes an in-kind distribution of a diamond ring worth $1,000 to a neighbor. The diamond ring is not subject to inheritance tax.

EXAMPLE 2: The total aggregate value of the tangible personal property in the estate is $15,000. The executor makes an in-kind distribution of a diamond ring worth $1,000 to a neighbor. The diamond ring is subject to inheritance tax because the total aggregate value of tangible personal property is greater than $5,000.

(2) Individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax.

1. For estates of decedents dying prior to July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants are exempt from Iowa inheritance tax.

2. For estates of decedents dying on or after July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, lineal ascendants, lineal descendents, and

stepchildren and their lineal descendants are exempt from Iowa inheritance tax. "Lineal descendants" includes descendants by adoption.

d. General rules. An Iowa inheritance tax return must be filed if estate assets pass to both an individual listed in Iowa Code section 450.9 and that individual's spouse.

(1) If an inheritance tax return is not required because the estate meets the criteria in paragraph 900.2(1)*"c,"* the final report (beginning with Iowa Code section 633.469) need not contain an inheritance tax receipt (clearance) issued by the department, but must properly certify that one of the criteria set forth in paragraph 900.2(1)*"c"* has been met as set forth in Iowa Code section 450.58(2).

(2) If any interest in real estate passes on account of the decedent's death and no Iowa inheritance tax return is required to be filed and the real estate does not pass through probate administration, then one of the persons succeeding to the interest in the real property must file an affidavit in the county in which the real property is located setting forth the legal description of the real property and the fact that an Iowa inheritance tax return is not required to be filed with the department. A copy of this affidavit must be retained by the beneficiary that holds the real estate.

(3) If a return is filed with the department and the return is not required to be filed, the department will retain the return as required by statutes governing retention of returns. However, the department will not process the filed return if the statute does not require that the return be filed. The department will not issue a clearance in an estate in which a return is not required to be filed.

900.2(2) *Form and content—inheritance tax return.*

a. Reserved.

b. Estates of decedents dying on or after July 1, 1983. For estates of decedents dying on or after July 1, 1983, the preliminary inheritance tax return is abolished and a single inheritance tax return shall be filed. The return shall provide for schedules listing the assets includable in the gross estate, a listing of the liabilities deductible in computing the net estate, and a computation of the tax due, if any, on each share of the net estate. The return shall conform as nearly as possible to the federal estate tax return, Form 706. For information regarding Iowa returns, see subrule 900.1(5). If the estate has filed a federal estate tax return, a copy must be submitted with the Iowa return. If the federal estate return includes the schedules of assets and liabilities, the taxpayer may omit the Iowa schedules of assets from the return. However, any Iowa schedules indicating liabilities must be filed with the Iowa return due to proration of liabilities. When Iowa schedules are filed with the return, only those schedules which apply to the particular assets and liabilities of the estate are required. A return merely listing the assets and their values when the gross estate is in excess of $25,000 ($10,000 for estates of decedents dying before July 1, 2001) is not sufficient in nontaxable estates. In this case, the return must be amended to list the schedule of liabilities and the computation of the shares of the net estate before an inheritance tax clearance will be issued.

c. Special rule when the surviving spouse succeeds to property in the estate. Effective for estates of decedents dying on or after January 1, 1988, the following rules apply when the surviving spouse succeeds to property in the estate:

(1) If all of the property includable in the gross estate for inheritance tax purposes is held in joint tenancy with right of survivorship by husband and wife alone, an inheritance tax return is not required to be filed and a certificate from the department stating no inheritance tax is due is not required to release the inheritance tax lien under Iowa Code section 450.7(2).

(2) If any of the property includable in the gross estate passes to the surviving spouse by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the surviving spouse is not the only surviving joint tenant, an inheritance tax return is required to be filed.

d. Estates of decedents dying on or after July 1, 1999.

(1) In addition to the special rule for surviving spouses set forth in paragraph 86.2(2)*"c,"* effective for estates of decedents dying on or after July 1, 1999, an estate that consists solely of property includable in the gross estate that is held in joint tenancy with right of survivorship and that is exclusively owned by the decedent and any person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, or a combination solely consisting of such persons, is not required to file an Iowa inheritance

tax return, unless such an estate has an obligation to file a federal estate tax return. For property of the estate passing by means other than by joint tenancy with right of survivorship or any property passing by joint tenancy with right of survivorship when the title to the property is held by persons other than those persons declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, an inheritance tax return is required to be filed.

1. For estates of decedents dying prior to July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants are exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9.

2. For estates of decedents dying on or after July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, lineal ascendants, lineal descendants, and stepchildren and their lineal descendants are exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9. "Lineal descendants" includes descendants by adoption.

(2) The exemption granted to stepchildren and their lineal descendants is limited to the stepchildren of the decedent and the lineal descendants of the stepchildren of the decedent exclusively. The exemption is not extended to include any lineal ascendants of the step relationship, such as stepparent or stepgrandparent, nor does it include step relations of the decedent's lineal ascendants or descendants, such as the stepchildren of the decedent's children. For a definition of "stepchild" for estates of decedents dying on or after July 1, 2003, please see the definition found in 701—900.1(450).

(3) The rate of Iowa inheritance tax imposed on a share is based upon the relationship of the beneficiary to the decedent or the type of entity that is the beneficiary. For estates of decedents dying before July 1, 2001, a net estate that is less than $10,000 does not have an Iowa inheritance tax obligation. For estates of decedents dying on or after July 1, 2001, the net estate that is less than $25,000 does not have an Iowa inheritance tax obligation. The following is the most current Iowa inheritance tax rate schedule for net estates over $25,000:

SCHEDULE B

Brother, sister (including half-brother, half-sister), son-in-law, and daughter-in-law. There is no exemption.

If the share is:
Not over $12,500, the tax is 5% of the share.

If over	But not over	Tax is	Of excess over
$ 12,500	$ 25,000	$ 625 + 6%	$ 12,500
25,000	75,000	1,375 + 7%	25,000
75,000	100,000	4,875 + 8%	75,000
100,000	150,000	6,875 + 9%	100,000
150,000	and up	11,375 + 10%	150,000

SCHEDULE C

Uncle, aunt, niece, nephew, foster child, cousin, brother-in-law, sister-in-law, child's stepchild, and all other individual persons. There is no exemption.

If the share is:
Not over $50,000, tax is 10% of the share.

If over	But not over	Tax is	Of excess over

$ 50,000	$100,000	$ 5,000 + 12%	$ 50,000
100,000	and up	11,000 + 15%	100,000

SCHEDULE D

A firm, corporation or society organized for profit, including an organization failing to qualify as a charitable, educational or religious organization:

Effective July 1, 2001, any fraternal and social organization which does not qualify for exemption under IRC Section 170(c) or 2055:

15% of the amount.

SCHEDULE E

Any society, institution or association incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to a cemetery association, including a humane society not organized under the laws of this state, or to a resident trustee for use without this state:

10% of the amount.

SCHEDULE F

An unknown heir, as distinguished from an heir who is not presently ascertainable, due to contingent events:

5% of the amount.

SCHEDULE G

A charitable, religious, educational, or veterans organization as defined in IRC Section 170(c) or 2055.

All other shares to income tax exempt organizations that are not defined in IRC Section 170(c) must provide their IRS letter of determination. Organizations may also be required to provide evidence that the bequest has restricted the funds to a conforming activity.

Public libraries, public art galleries, hospitals, humane societies, municipal corporations, bequests for care of cemetery or burial lots of the decedent or the decedent's family, and bequests for religious services the total of which does not exceed $500.

Entirely exempt: No tax.

900.2(3) *Liability for the tax.* The personal representative of an estate is personally liable for the total tax due from any person receiving property subject to the tax, to the extent the person's share of the property is subject to the jurisdiction of the probate court and the personal representative. The trustee of trust property subject to tax is personally liable for the total tax due from a beneficiary to the extent of the person's share of the trust property. Each heir, beneficiary, transferee, joint tenant, and any other person being beneficially entitled to any property subject to tax is personally liable for the tax due on all property received subject to the tax. The person is not liable for the tax due on another person's share of property subject to tax, unless the person is also a personal representative, trustee, or other fiduciary

liable for the tax by reason of having jurisdiction over the property, the succession to which is taxable. *Eddy v. Short,* 190 Iowa 1376, 179 N.W. 818 (1920); *Waterman v. Burbank,* 196 Iowa 793, 195 N.W. 191 (1923).

900.2(4) *Supplemental return—deferred interest.* When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation. At the top of the front page of the return, the word "SUPPLEMENTAL" shall be printed.

900.2(5) *Amended return.* If additional assets or errors in valuation of assets or deductible liabilities are discovered after the filing of the inheritance tax return increasing the amount of tax due, an amended inheritance tax return must be filed with the department, reporting the additional assets. The appropriate penalty and interest will be charged on the additional tax due pursuant to Iowa Code section 421.27 and department rules in 701—Chapter 10. To file an amended inheritance tax return, Form IA 706 shall be completed and at the top of the front page of the return the word "AMENDED" shall be printed. If additional liabilities are discovered or incurred after the filing of the inheritance tax return which result in an overpayment of tax, an amended inheritance tax return must be filed in the manner indicated above. For amended returns resulting from federal audit adjustments—see subrule 900.3(6) and rules 900.9(450), and 900.12(450). For permitted and amended returns not permitted for change of values—see subrule 900.9(4).

900.2(6) *Due date for filing—return on present property interests.* Unless an extension of time has been granted, the final inheritance tax return, or the inheritance tax return in case of decedents dying on or after July 1, 1983, must be filed and any tax due paid, for all property in present possession or enjoyment:

a. On or before the last day of the ninth month after death for estates of decedents dying on or after July 1, 1984, subject to the due date falling on a Saturday, Sunday, or legal holiday, which would then make the return due on the following business day. The following table for return due dates illustrates this subrule:

Deaths Occurring During:	Return Due Date:
July 1996	April 30, 1997
August 1996	June 2, 1997
	(May 31 is a Saturday and June 1 is a Sunday)
September 1996	June 30, 1997
October 1996	July 31, 1997
November 1996	September 2, 1997
	(August 31 is a Sunday, September 1 is Labor Day)
December 1996	September 30, 1997
January 1997	October 31, 1997
February 1997	December 1, 1997
	(November 30 is a Sunday)
March 1997	December 31, 1997
April 1997	February 2, 1998
	(January 31 is a Saturday and February 1 is a Sunday)
May 1997	March 2, 1998
	(February 28 is a Saturday and March 1 is a Sunday)
June 1997	March 31, 1998

b. Within nine months after death for estates of decedents dying during the period beginning July 1, 1981, and ending June 30, 1984.

900.2(7) *Election to file—before termination of prior estate.* The tax due on a future property interest may be paid, at the taxpayer's election, on the present value of the future interest as follows:

a. On or before the last day of the ninth month after the decedent's death (or within one year after the death of the decedent for estates of decedents dying prior to July 1, 1981). Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date of the decedent's death. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date of the decedent's death that must be used.

b. After the last day of the ninth month following the decedent's death (one year after death for estates of decedents dying prior to July 1, 1981) but prior to the termination of the prior estate. Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date the tax is paid. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date the tax is paid that must be used. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950); *In re Estate of Millard,* 251 Iowa 1282, 105 N.W.2d 95 (1960). *In re Estate of Dwight E. Clapp,* Clay County District Court, Probate No. 7251 (1980).

900.2(8) *Mandatory due date—return on a future property interest.*

a. Reserved.

b. Mandatory due date—return on a future property interest for estates of decedents dying on or after July 1, 1981. Unless the tax due on a future property interest has been paid under the provisions of paragraphs 900.2(7)*"a"* and *"b,"* the tax due must be paid on or before the last day of the ninth month following the termination of the prior estate. The statute does not provide for an extension of the mandatory due date for payment of the tax.

900.2(9) *Extension of time—return and payment.* For estates of decedents dying on or after July 1, 1984, the department may grant an extension of time to file an inheritance tax return on an annual basis. To be eligible for an extension, an application for an extension of time must be filed with the department on a form prescribed or approved by the director. The application for extension must be filed with the department prior to the time the tax is due and an estimated payment of 90 percent of the tax due must accompany the application—see Iowa Code section 421.27 and rule 701—10.6(421). An extension of time to pay the tax due may be granted in the case of hardship. However, for extensions to be granted, the request must include evidence of the hardship—see 701—Chapter 10. An extension of time to file cannot be extended for a period of time longer than ten years after the last day of the month in which the death of the decedent occurs.

900.2(10) *Discount.* There is no discount allowed for early payment of the tax due.

900.2(11) *Penalties.* See rule 701—10.6(421) for the calculation of penalty for deaths occurring on or after January 1, 1991.

900.2(12) *Interest on tax due.* All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the inheritance tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

This rule is intended to implement Iowa Code sections 421.14, 450.4, 450.5, 450.6, 450.9, 450.22, 450.44, 450.46, 450.47, 450.51, 450.52, 450.53, 450.63, and 450.94 and 2004 Iowa Acts, chapter 1073, and 2005 Iowa Acts, chapter 14.

[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; **ARC 1137C**, IAB 10/30/13, effective 12/4/13; **ARC 2633C**, IAB 7/20/16, effective 8/24/16; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—900.3(450) Audits, assessments and refunds.

900.3(1) *Audits.* Upon filing of the inheritance tax return, the department must audit and examine it and determine the correct tax due. A copy of the federal estate tax return must be filed with the inheritance tax return in those estates where federal law requires the filing of a federal estate tax return. The department may request the submission of wills, trust instruments, contracts of sale, deeds, appraisals, and such other information as may reasonably be necessary to establish the correct tax due.

See Iowa Code sections 450.66 and 450.67 and *Tiffany v. County Board of Review,* 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4). The person or persons liable for the payment of the tax imposed by Iowa Code chapter 450 shall keep the records relating to the gross and net estate required for federal estate tax purposes under 26 U.S.C. Section 6001 of the Internal Revenue Code and federal regulation Section 20.6001-1.

900.3(2) *Assessments for additional tax.* The taxpayer must file an inheritance tax return on forms prescribed by the director on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department must notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the last day of the following month. For estates with decedents dying on or after July 1, 1999, the date of the notice and not the postmark date is controlling. If the inheritance tax return is not filed within the time prescribed by law, taking into consideration any extensions of time, or the return as filed is not correct, the department may make an assessment for the tax and any penalty and interest due based on the inventories, wills, trust instruments, and other information necessary to ascertain the correct tax. For interest and penalty rate information, see 701—Chapter 10.

900.3(3) *Refunds.* If the examination and audit of the inheritance tax return discloses an overpayment of tax, the department will refund the excess to the taxpayer. See 701—Chapter 10 for the statutory interest rate commencing on or after January 1, 1982. For estates of decedents dying prior to January 1, 1988, interest shall be computed for a period beginning 60 days from the date of the payment to be refunded. For estates of decedents dying on or after January 1, 1988, interest must be computed for a period beginning the first day of the second calendar month following the date of payment, or the date upon which the return which sets out the refunded payment was actually filed, or the date that return was due to be filed, whichever date is the latest. For the purposes of computing the period, each fraction of a month counts as an entire month. If the taxpayer, after the tax has been paid, discovers additional liabilities which, when offset by any additional assets results in an overpayment of the tax, the excess payment will be refunded to the taxpayer upon filing with the department an amended inheritance tax return claiming a refund. No refund for excessive tax paid shall be made by the department unless an amended return is filed with the department within three years (five years for estates of decedents dying prior to July 1, 1984) after the tax payment upon which the claim is made became due, or one year after the tax was paid, whichever time is the later—see Iowa Code section 450.94(3).

900.3(4) *Supplemental assessments and refund adjustments.* The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.9(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

900.3(5) *Assessments—period of limitations.* Effective for estates of decedents dying on or after July 1, 1984, assessments for additional tax due must be made within the following periods of time:

a. Within three years after the return is filed for property reported to the department on the return. The three-year period of limitation does not begin until the return is filed. The time of the decedent's death is not relevant. For purposes of determining the period of limitations, the assessment period shall terminate on the same day of the month three years later which corresponds to the day and month the return was filed. If there is no numerically corresponding day three years after the return is filed, or if the expiration date falls on a Saturday, Sunday, or legal holiday, the assessment period expires the preceding

day in case there is no corresponding day, or the next day following which is not a Saturday, Sunday, or legal holiday.

b. The period of time for making an assessment for additional tax is unlimited if a return is not filed with the department.

c. If a return is filed with the department, but property which is subject to taxation is omitted from the return, the three-year period for making an assessment for additional tax on the omitted property does not begin until the omitted property is reported to the department on an amended return. The omission of property from the return only extends the period of limitations for making an assessment for additional tax against the beneficiary, surviving joint tenant, or transferee whose share is increased by the omitted property. Other shares of the estate are not affected by the extended assessment period due to the omitted property. The inheritance tax is a separate succession tax on each share of the estate, not on the estate as a whole. *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906).

900.3(6) *Period of limitations—federal audits.*

a. Statute of limitations and federal audits in general. In the case of a federal audit, the department, notwithstanding the normal three-year audit period specified in Iowa Code paragraphs 450.94(5)*"a"* and *"b,"* shall have an additional six-month period for examination of the inheritance tax return to determine the correct tax due and for making an assessment for additional tax that may be due.

The additional six-month period begins on the date the taxpayer performs two affirmative acts: (1) notifies the department, and the department receives such a notification, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, federal gift, and federal generation skipping transfer taxes (for deaths occurring after December 31, 2004) have been concluded and (2) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document concerning the concluded controversy. The additional six-month examination period does not begin until both of the acts are performed. See Iowa Code sections 622.105 and 622.106 for the mailing date as constituting the filing date and Iowa Code section 4.1(34) and *Emmetsburg Ready Mix Co. v. Norris,* 362 N.W.2d 498 (Iowa 1985) when the due date falls on a legal holiday.

b. Statute of limitations regarding federal audits involving real estate.

(1) In general. Effective for estates with decedents dying on or after July 1, 1999, in addition to the period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa inheritance tax purposes to the value accepted by the Internal Revenue Service for federal estate tax purposes. The department shall have an additional six months to make an examination and adjustment for the value of the real property.

(2) Beginning of the additional six-month period. The additional six-month period for assessment and adjustment begins on the date the taxpayer performs two affirmative acts: (a) notifies the department, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, federal gift, and federal generation skipping transfer taxes (for deaths occurring after December 31, 2004) have been concluded and (b) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document. Such documents must indicate the final federal determination and final audit adjustments of all real property.

(3) Adjustment required. The department must make an adjustment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether any of the following have occurred: an inheritance tax clearance has been issued; an appraisal has been obtained on the real property indicating a contrary value; there has been an acceptance of another value for real property by the department; an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property.

(4) Refunds. Despite the time period for refunds set forth in Iowa Code section 450.94(3), the personal representative for the estate has six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the Internal Revenue Service to claim a refund from the department of an overpayment of tax due to the change in the valuation of real property by the Internal Revenue Service.

c. Effect of additional time periods. The additional six-month audit period set forth in *"a"* and *"b"* under this subrule does not limit or shorten the normal three-year examination period. As a result, a six-month additional examination period has no application if the additional six-month examination period would expire during the normal three-year audit period. If additional tax is found to be due, see paragraph 900.12(5)*"b"* for the inheritance tax lien filing requirements for securing the additional tax after an inheritance tax clearance has been issued. The six-month additional examination period means the department shall have at least six months to examine the return after the notification. The department will have more time if the normal three-year examination period expires after the six-month additional period for examination. After the expiration of the normal three-year examination period, and absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments for real property is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax laws that incorporate Internal Revenue Code provisions. See Iowa Code section 450.94(5), 701—900.9(450) and 701—900.12(450), and *Kelly-Springfield Tire Co. v. Iowa Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

This rule is intended to implement Iowa Code sections 422.25, 422.30, 450.37, 450.53, 450.65, 450.71, and 450.94.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1545C**, IAB 7/23/14, effective 8/27/14; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—900.4(450) Appeals. Rescinded **ARC 7192C**, IAB 12/13/23, effective 1/17/24.

701—900.5(450) Gross estate.

900.5(1) *Iowa real and tangible personal property.*

a. Real estate and tangible personal property with a situs in the state of Iowa and in which the decedent had an interest at the time of death is includable in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common.

b. Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers include, but are not limited to, transfers of real estate in which the grantor retained a life estate, life interest, interest or the power of revocation, property or interest in property in trust, and gifts made within three years of death in excess of the federal gift tax exclusion. These constitute transfers of property in which the decedent may not have an interest at death, but are includable in the gross estate for inheritance tax purposes. *In re Dieleman's Estate v. Dept. of Revenue,* 222 N.W.2d 459 (Iowa 1974); *In re English's Estate,* 206 N.W.2d 305 (Iowa 1973); and *Lincoln's Estate v. Briggs,* 199 N.W.2d 337 (Iowa 1972).

c. A nonresident decedent's interest in a corporation, limited liability company, or partnership that owns real or tangible personal property with an Iowa situs that is titled in the name of that business entity is not subject to inheritance tax. An interest in a business entity is intangible personal property which follows the residence of the decedent for the purposes of inheritance tax.

d. Tangible personal property as defined in Iowa Code section 633.276 with an Iowa situs which is distributed in kind from the estate is not subject to inheritance tax if the aggregate value of all tangible personal property in the estate does not exceed $5,000. See 900.2(1)*"c"*(1)"5."

900.5(2) *Foreign real estate and tangible personal property.* Real estate and tangible personal property with a situs outside the state of Iowa are not subject to the Iowa inheritance tax and, therefore, are not includable in the decedent's gross estate for tax purposes. *Frick v. Pennsylvania,* 268 U.S. 473, 45 S. Ct. 603, 69 L.Ed. 1058 (1925); *In re Marx Estate,* 226 Iowa 1260, 286 N.W.2d 422 (1939).

900.5(3) *Intangible personal property—decedent domiciled in Iowa.* Intangible personal property, or interest therein, owned by a decedent domiciled in Iowa is includable in the gross estate for inheritance tax purposes regardless of the physical location of the evidence of the property or whether the account or obligation is with a non-Iowa financial institution. *Curry v. McCanless,* 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed 1339 (1939); *Lincoln's Estate v. Briggs,* 199 N.W.2d 337 (Iowa 1972).

900.5(4) Reserved.

900.5(5) *Classification of property.* The property law of the state of situs determines whether property is classified as real, personal, tangible or intangible and also whether decedent had an interest in the property. *Dieleman's Estate v. Dept. of Revenue,* 222 N.W.2d 459 (Iowa 1974); *Williamson v. Youngs,* 200 Iowa 672, 203 N.W. 28 (1925).

900.5(6) *Insurance—in general.* Whether the proceeds or value of insurance is includable in the gross estate for inheritance tax purposes depends on the particular facts in each situation. Designated beneficiary and type of insurance (life, accident, health, credit life, etc.) are some of the factors that are considered in determining whether the value or proceeds are subject to tax. *In re Estate of Brown,* 205 N.W.2d 925 (Iowa 1973).

a. Insurance proceeds subject to tax. The proceeds of insurance on the decedent's life owned by the decedent and payable to the decedent's estate or personal representative is includable in the gross estate. Insurance owned by the decedent on the life of another is includable in the gross estate to the extent of the cash surrender value of the policy. The proceeds of all insurance to which the decedent had an interest, at or prior to death, but are payable for reasons other than death, are includable in the gross estate. *Bair v. Randall,* 258 N.W.2d 333 (Iowa 1977).

b. Insurance proceeds not taxable. Insurance on the decedent's life payable to a named beneficiary, including a testamentary trust, other than the insured, the estate, or the insured's personal representative, is not subject to Iowa inheritance tax. *In re Estate of Brown,* 205 N.W.2d 925 (Iowa 1973).

c. Insurance proceeds includable—depending on circumstances. Credit life insurance and burial insurance are offsets against the obligation. If the obligation is deducted in full or in part in computing the taxable shares of heirs or beneficiaries, the proceeds of the credit life and burial insurance are includable in the gross estate to the extent of the obligation. Insurance on the decedent's life and owned by the decedent, pledged as security for a debt is an offset against the debt if the insurance is the primary source relied upon by the creditor for the repayment of the obligation and is includable in the gross estate on the same conditions as credit life insurance. See *Estate of Carl M. Laartz* Probate No. 9641, District Court of Cass County, March 17, 1973; *Estate of Roy P. Petersen,* Probate No. 14025, District Court of Cerro Gordo County, May 16, 1974.

Insurance on the decedent's life, payable to a corporation or association in which the decedent had an ownership interest, while not subject to tax as insurance, may increase the value of the decedent's interest. *In re Reed's Estate,* 243 N.Y. 199, 153 N.E.47, 47 A.L.R. 522 (1926).

900.5(7) *Gifts in contemplation of death—for estates of decedents dying prior to July 1, 1984, only.* A transfer of property, or interests in property by a decedent, except in the case of a bona fide sale for fair consideration within three years of the grantor's death, made in contemplation of death, is includable in the decedent's gross estate. Any such transfer made within the three-year period prior to the grantor's death is presumed to be in contemplation of death, unless it is shown to the contrary. Whether a transfer is made in contemplation of death depends on the intention of the grantor in making the transfer and will depend on the facts and circumstances of each individual transfer.

a. Factors to be considered include, but are not limited to:

(1) The age and health of the grantor at the time of the transfer,

(2) Whether the grantor was motivated by living or death motives,

(3) Whether or not the gift was a material part of the decedent's property,

(4) Whether the gift was an isolated event or one of a series of gifts during the decedent's lifetime.

b. Factors which tend to establish that the motive for the gift was prompted by the thought of death include, but are not limited to:

(1) Made with the purpose of avoiding death taxes,

(2) Made as a substitute for a testamentary disposition of the property,

(3) Of such an amount that the remaining property of the grantor would not normally be sufficient to provide for the remaining years of the grantor and those of the grantor's household,

(4) Made with the knowledge that the grantor is suffering from a serious illness that is normally associated with a shortened life expectancy.

c. Factors which tend to establish that the gift was inspired by living motives include, but are not limited to:

(1) Made on an occasion and in an appropriate amount that is usually associated with such gift giving occasions as Christmas, birthdays, marriage, or graduation,

(2) Made because of the financial need of the donee and in an amount that is appropriate to the need,

(3) Made as a remembrance or reward for past services or favors in an amount appropriate to the occasion,

(4) Made to be relieved of the burden of management of the property given, retaining sufficient property and income for adequate support and maintenance.

For a gift to be determined to have been made in contemplation of death it is not necessary that the grantor be conscious of imminent or immediate death. However, the term means more than the general expectation of death which all entertain. It is a gift when the grantor is influenced to do so by such expectation of death, arising from bodily or mental condition, as prompts persons to dispose of their property to those whom they deem the proper object of their bounty. It is sufficient if the thought of death is the impelling cause for the gift. *U.S. v. Wells,* 283 U. S. 102, 51 S. Ct. 446, 75 L.Ed. 867 (1931); *In re Mann's Estate,* 219 Iowa 597, 258 N.W. 904 (1935).

d. Gifts made within three years prior to death—for estates of decedents dying on or after July 1, 1984. All gifts made by the donor within three years prior to death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax purposes. The motive, intention or state of mind of the donor is not relevant. Date of valuation for a gift in which there was a full transfer of ownership is valued at the date in which the gift is completed. However, for a gift of an interest in property that is less than a full transfer of ownership, which includes, but is not limited to, a life estate or conditional gift, the date of valuation is the date of the death of the decedent, unless alternative valuation is chosen. Effective for estates of decedents dying on or after July 1, 2003, valuation of property transferred by the grantor or donor is based on the net market value at the date of transfer. The fact alone that the transfer is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax purposes is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, are subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

EXAMPLE. The decedent-donor, A, died July 1, 2012. The three-year period during which gifts may be subject to inheritance tax begins July 1, 2009. During the calendar year 2009, A made a cash gift to nephew B of $14,000 on May 1, 2009, and a second gift to B of $4,000 on August 1, 2009. In this example, none of the $14,000 gift made on May 1, 2009, is includable for inheritance tax purposes because it was made before the three-year period began, based on A's date of death. All of the $4,000 gift made on August 1, 2009, is includable for inheritance tax purposes because it is in excess of the calendar year 2009 federal gift tax exclusion of $13,000.

(1) Split gift. At the election of the donor's spouse, a gift made by a donor to a person, other than the spouse, shall be considered, for inheritance tax purposes, as made one half by the donor and one half by the donor's spouse. This split gift election for inheritance tax purposes is subject to the same terms and conditions that govern split gifts for federal gift tax purposes under 26 U.S.C. Section 2513.

The consent of the donor's spouse signified under 26 U.S.C. Section 2513(b) shall also be presumed to be consent for Iowa inheritance tax purposes, unless the contrary is shown. If the split gift election

is made, the election shall apply to all gifts made during the calendar year. Therefore, if the election is made, each spouse may use the annual federal gift tax exclusion which shall be applied to one-half of the total value of all gifts made by both spouses during the calendar year to each donee.

(2) Types of transfers which may result in a gift. Whether a transfer of property constitutes a gift depends on the facts and circumstances surrounding each individual transfer. Transfers which may result in a gift, in whole or in part, include, but are not limited to: sales of property where the purchase price, or terms of sale, are less than fair market value; a loan of money, interest free, even though the loan is payable on demand; the release of a retained life use of property; and the payment of a debt or other obligation of another person.

(3) Types of transfers that are not a gift. However, certain transfers which in property law would be considered a present transfer of an interest in property may not be considered gifts within the Iowa three-year rule under Iowa Code section 450.3(2). Rather the transfers may be transfers intended to take effect in possession or enjoyment at death. Examples of this kind of transfer would include, but are not limited to, transfers in trust or otherwise, with a retained life use or interest; commercial annuities where payments are made to a beneficiary upon the death of the primary annuitant; transfers that place property in joint tenancy; irrevocable transfers of real or personal property where the deed or bill of sale is placed in escrow to be delivered only upon the grantor's death. Transfers of this kind are subject to inheritance tax under Iowa Code section 450.3(3) as a transfer to take effect in possession or enjoyment at death, even though under property law an interest in the property may have been transferred prior to death. Different kinds of transfers that may constitute a taxable gift, in whole or in part, include but are not limited to the following:

EXAMPLE A. Grantor-decedent, A, on July 1, 1992, transferred to nephew B, without consideration, a 160-acre Iowa farm, reserving the life use. On the date of transfer, the farm had a fair market value of $2,000 per acre, or $320,000. On August 1, 1994, A released the retained life estate without any consideration being given and then died on December 1, 1994. The release on August 1, 1994, constitutes a gift, for inheritance tax purposes, of the value of the entire farm (less the annual gift tax exclusion), within the three-year period prior to death. What is taxable is what would have been taxable had the release not been given. *United States v. Allen,* 293 F.2d 916 (10th Cir. 1961); Rev. Ruling 56-324, 1956 2 C.B. 999. In this example, the gift is not to be valued at the time of the release of the life use, but rather at its fair market value at the time of death. See subrule 900.9(1). The real estate cannot be valued at its alternate valuation date because it is not included in the federal gross estate for federal estate tax purposes, but rather it constitutes an adjusted taxable gift not eligible for the alternate valuation date. See rule 701—900.10(450) and Federal Estate Tax Regulation Section 20.2032-1(a) and (d).

EXAMPLE B. A, on August 1, 2009, loaned brother B $450,000 which was evidenced by a non-interest-bearing promissory note, payable on demand. A died on October 1, 2011, with no part of the loan having been repaid. The principal amount of the note is includable in A's gross estate. The free use of money is a valuable property right to the debtor. *Dickman v. Commissioner,* 465 U.S. 330 (1984). Thus, in effect, A has made a gift of the value of the interest to B each year the debt remains unpaid. Assuming for purposes of illustration that the applicable federal short-term rate for the entire year is 9 percent for each year and no other gifts were made to B, A has made a gift to B of $40,500 through August 2010 (one year after the note was executed) and an additional gift of $40,500 through August 1, 2011, and two months' interest of $6,750 from August 1, 2011, to the date of death on October 1, 2011. Therefore, in calendar year 2009 A has made a gift of 5/12 of $40,500, or $16,875. After deducting the annual calendar year exclusion of $13,000, $3,875 is subject to inheritance tax. Since the loan was outstanding for all of calendar year 2010, $40,500, less the $13,000 exclusion, or $27,500, is subject to inheritance tax. For calendar year 2011 the loan was outstanding for nine months. Three-fourths of $40,500, less $13,000, or $17,375, is subject to inheritance tax.

In this example it is not necessary that the loan be made within the three-year period prior to death. It is the free use of the loan during the three-year period prior to death that constitutes the gift.

EXAMPLE C. On March 1, 2010, A sold a 160-acre Iowa farm to niece B for $1,500 per acre, or $240,000. On the date of sale, the fair market value of the farm was $2,500 per acre, or $400,000. A died on August 1, 2012. This sale is, in part, a gift. It is not a bona fide sale for an adequate and full

consideration in money or money's worth, and as a result, the difference between the sale price and the fair market value of the farm on the date of sale constitutes a gift. The sale price in this example represents only 60 percent of the farm's fair market value; therefore, 40 percent of the farm is a gift. However, the gift percentage to apply to the farm's value at death is 37 percent, not 40 percent, because the $13,000 annual gift tax exclusion must be deducted from the value of the gift. See the computation of this percentage in Example D immediately following.

EXAMPLE D. On March 1, 2010, A sold a 160-acre Iowa farm to niece B for $2,500 per acre, or $400,000, which was also the fair market value of the farm on the date of sale. The sale was an installment sale contract, payable in 20 equal annual installments of principal and interest. The unpaid principal balance is to draw interest at one-half of the prevailing Federal Land Bank loan rate, which for purposes of illustration we will assume to be the rate of 12 percent, or 6 percent per year. The annual payments of principal and interest are $34,873.82 per year. A died on August 1, 2012. In this example, the sale price in and of itself does not constitute a gift because the sale price was also the fair market value of the farm. However, the difference between the prevailing Federal Land Bank loan rate of 12 percent and the contract rate of 6 percent constitutes a gift from A to B.

The amount of the gift that is includable in the gross estate is computed by determining the present value of the future annual payments of $34,873.82 discounted to reflect a 12 percent return on the investment. The discounted value is then divided by the fair market value of the farm on the date of the sale to determine the percentage of the sale price that is a bona fide sale for full consideration and the percentage of the sale price that represents a gift before the annual exclusion. The gift percentage is then applied to the fair market value of the farm (or special use value, if applicable) at death, to determine the amount that is includable in the gross estate.

The computation in this example is as follows:

The present value of the future annual payments of $34,873.82 for 20 years to reflect a 12 percent return on an investment is $260,488.05. That is, an investor who desires to earn the market rate of return of 12 percent on an investment would only pay $260,488.05 for this 6 percent $400,000 contract of sale.

Bona Fide Sale Percentage

Present value:	260,488.05 = 65%
Sale price:	400,000.00

This is the percentage of the sale price of $400,000 that represents a bona fide sale for full consideration.

Gift Percentage

The sale price of $400,000 - $260,488.05 or $139,511.95 is the gift portion of the sale price due to the 6 percent interest rate on the contract, before the $13,000 annual exclusion is deducted.

The gift percentage is computed as follows:

$$\$139{,}511.95 - \$13{,}000 = \frac{\$126{,}511.95}{400{,}000.00} = 32\%$$

In this example the gift percentage used to determine the amount of the farm value at death that is taxable is only 32 percent of the value because deducting the $13,000 exclusion reduced the gift percentage from 35 percent to 32 percent. The gift took place in the year of sale, not in the year of death. As a result, 32 percent of fair market value (or special use value, if applicable) of the farm at the time of the donor's death is includable in the gross estate for inheritance tax purposes.

900.5(8) *Joint tenancy property—in general.* Whether the form of ownership of property is considered to be joint tenancy is determined by the property law of the state of the situs of the property. Generally, the words and phrases "to A and B as joint tenants with full rights of survivorship and not as

tenants in common" create a joint tenancy form of ownership unless a contrary interest can be shown by material evidence. "To A or B, payable to the order of self" creates an alternative right of ownership and for tax purposes is treated as joint tenancy property. *In re Estate of Martin,* 261 Iowa 630, 155 N.W.2d 401 (1968); *Petersen v. Carstensen,* 249 N.W.2d 622 (Iowa 1977); *In re Estate of Louden,* 249 Iowa 1393, 92 N.W.2d 409 (1958). Joint tenancy property may be held by more than two persons. *In re Estate of Horner,* 234 Iowa 624, 12 N.W.2d 166 (1944). However, the use of the words "as joint tenants" alone without the use of the phrase "with right of survivorship" may only create a tenancy in common. *Albright v. Winey,* 226 Iowa 222, 284 N.W. 86 (1939).

a. Joint tenancy property—husband and wife alone. Generally there are no shares in joint tenancy property because each joint tenant owns the whole property. As a result, joint tenancy property is not taxed like tenancy in common property where each owner has a specific share. If the joint tenancy property is held by husband and wife alone, only one-half of the property is includable in the gross estate for inheritance tax purposes in the estate of the first joint tenant to die. However, if the survivor can establish by competent evidence that separate money or property was used and contributed to a larger percentage than one-half to the acquisition of a specific item or items of jointly held property, then the larger percentage of such item or items shall be excluded from taxation. *Ida M. Jepsen v. Bair,* No. 85, State Board of Tax Review, June 18, 1975.

b. Joint tenancy property—not held by husband and wife alone. Property held in this form of joint tenancy is includable in the gross estate of the deceased joint tenant, except to the extent the surviving joint tenant or tenants can establish contribution to the acquisition of the joint property, in which case the proportion attributed to the contribution is excluded from the gross estate. In the case of multiple joint tenancy property, excess contribution established by one surviving joint tenant cannot be attributed to another surviving joint tenant. For tax purposes, the requirement of contribution in effect establishes percentage ownership—or shares—in jointly held property that does not exist in property law. Contribution to the acquisition of jointly held property can be established by the survivor by proof, which includes, but is not limited to, evidence that the property was acquired by gift, inheritance, or purchase from the survivor's separate funds or property. Contribution means cash or cash in kind that is applied to the cost of obtaining the property at issue. Unlike joint tenancy property held solely between husband and wife, if any of the surviving joint tenants is not the spouse of the decedent, the presumed one-half exclusion is not automatically available without proof of contribution.

c. Joint tenancy—convenience or constructive trust. If the record ownership of bank accounts, certificates of deposit, and other kinds of property are held in the form of joint tenancy, but in fact are held by the decedent and another person or persons who have a confidential or fiduciary relationship with the decedent, the property is not held in joint tenancy but is held in constructive or resulting trust by the survivor for the decedent. A confidential or fiduciary relationship is any relationship existing between the parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. In its broadest connotation, the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in one's important affairs. *First National Bank v. Curran,* 206 N.W.2d 317 (Iowa 1973). The fact that the decedent furnished the funds to acquire the property or demonstrated a kind, considerate, and affectionate regard for the survivor does not in itself establish a confidential relationship between the decedent and the survivor. If the evidence to establish a contrary relationship with respect to property in the form of joint tenancy is not substantial, a joint tenancy exists as a matter of law. *Petersen v. Carstensen,* 249 N.W.2d 622 (Iowa 1977).

If a confidential relationship constituting a constructive or resulting trust is established on behalf of the decedent, the property or property interest that is the subject of the trust is part of the decedent's gross estate as singly owned property.

900.5(9) *Transfers reserving a life income or interest.* If the grantor transfers property, except in the case of a bona fide sale for fair consideration, reserving the income, use, possession, or a portion thereof for life, the property is includable in the gross estate for inheritance tax purposes. *In re Sayres' Estate,* 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Estate of English,* 206 N.W.2d 305 (Iowa 1973). If there is a full reservation of income, the entire value of the property in which the reservation exists is includable for tax purposes. If only a portion of the income is reserved, the amount subject to tax is the full value

of the property at death multiplied by a fraction of which the total income reserved is the numerator and the total average earning capacity of like property is the denominator. See *In re Estate of English,* 206 N.W.2d at 310.

The reservation of the life income, or portion thereof, need not necessarily be stated or contained in the instrument of transfer to be includable for taxation. The transfer of property may contain no reservation of income or other incidents of ownership in the grantor, but if there is a contemporaneous agreement between the grantor and grantee to pay the income, or portion thereof, to the grantor for life, the two instruments or agreements when considered together may be construed to be reservation of the income from the transferred property. See *In re Sayres' Estate,* 245 Iowa 132 at 141, 142, 60 N.W.2d 120 (1953) for a full discussion of the subject.

The instrument need not be in any special form. For example, it may take the form of a contract of sale to terminate at death where the payments consist of the income from the property only. In addition, the transfer to be includable for taxation is not limited to income-producing property. For example, the transfer of the grantor's dwelling, reserving the life occupancy, falls within the meaning of a reserved life income or interest. Generally, revocable trusts can be classified as reserving a life income or interest. This type of transfer does not fall within the annual gift exclusion.

900.5(10) *Powers of appointment—in general.* Iowa Code section 450.3(4) is concerned with two aspects of powers of appointment that are subject to inheritance tax. First, the taxation of the decedent's property subject to the power of appointment in the estate of the donor (decedent), and second, the exercise, or nonexercise, of the power of appointment over the property in the estate of the donee (the decedent possessing the power).

a. General power of appointment. Whether the instrument of transfer utilized by the donor creates a general or special power of appointment is a matter of property law. For example, a devise to A for life with "power to dispose of and pass clear title ... if A so elects," creates a life estate with a general power of appointment. *In re Estate of Cooksey,* 203 Iowa 754, 208 N.W. 337 (1927). Also to A for life, "Especially giving unto A the right to use and dispose of the same as A may see fit," creates a general power of appointment, *Volz v. Kaemmerle,* 211 Iowa 995, 234 N.W. 805 (1931). However, the power to sell and convert the assets subject to the power does not in itself create a general power of appointment. *In re Estate of Harris,* 237 Iowa 613, 23 N.W.2d 445 (1946). A power is general if being testamentary, it can be exercised wholly in favor of the estate of the donee. *In re Estate of Spencer,* 232 N.W.2d 491 at 495, 496 (Iowa 1975). The definition of a general power of appointment contained in 26 U.S.C. Section 2056(b)(5) of the Internal Revenue Code would meet the test of a general power under Iowa law.

b. Special power of appointment. If there is a limitation on the donee's right to use the corpus only for care, maintenance and support, the power is special, not general. *Brown v. Brown,* 213 Iowa 998, 240 N.W. 910 (1932). Also, to A for life with power to handle the property for A's interest, limits the power of invasion of the principal for care and support only, and is therefore a special, not a general, power of appointment. *Lourien v. Fitzgerald,* 242 Iowa 1258, 49 N.W.2d 845 (1951). Also, to A for life, with unrestricted power of sale with no power over the sale proceeds creates only a special power of appointment in the donee. *McCarthy v. McCarthy,* 178 N.W.2d 308 (Iowa 1970).

If the donee's power to appoint is limited to a class or group of persons, a special, not a general, power is created. *In re Estate of Spencer,* 232 N.W.2d 491, at 496 (Iowa 1975).

c. Powers of appointment—taxation in donor's estate. If the instrument in the donor's estate creates a general power of appointment, the property subject to the power is taxed as if the property had been transferred to the donee in fee simple. Those who would succeed to the property in the event the power is not exercised are treated in the donor's estate as if they receive no interest in the property, even though in property law those who succeed to the property either by the exercise, or nonexercise, take from the donor of the power. *In re Estate of Higgins,* 194 Iowa 369 at 373, 189 N.W. 752 (1922); *Bussing v. Hough,* 237 Iowa 194 at 200, 21 N.W.2d 587 (1946).

If the instrument in the donor's estate creates a special power of appointment, the property subject to the power is taxed as if the donee of the power had received a life estate or term for years, as the case may be. Those persons who would take the property in the event the special power is not exercised are taxed in the donor's estate as if they had received the remainder interest in the property subject to the

special power, although an election to defer payment of the tax may result in either no tax or a different tax obligation. This could happen, for example, if the special power is the power to invade the corpus for the health, education, and maintenance of the donee.

d. Powers of appointment in the estate of a donee dying on or after January 1, 1988. Property which is subject to a general power of appointment is includable for inheritance tax purposes in the gross estate of a donee dying on or after January 1, 1988, if the donee has possession of the general power of appointment at the time of the donee's death, or if the donee has released or exercised the general power of appointment within three years of death. Whether or not the donee of a general power exercises the general power at death is not relevant to the includability of the property subject to the general power in the estate of the donee. The mere possession of the power at death is sufficient for the property subject to the power to be included in the estate of the donee for inheritance tax purposes.

Property subject to a special power of appointment is not includable in the gross estate of the donee of the power regardless of whether the donee possesses the special power or exercised the power at death, unless a QTIP election was made under Iowa Code subsection 450.3(7) in which case the rule governing QTIP elections shall control. See paragraphs 900.5(10)*"a"* and *"b"* for the distinction between a general and special power and subrule 900.5(11) for the rule governing QTIP elections.

For inheritance tax purposes, if there is an exercise or release of the general power within three years of the donee's death, the property subject to the exercise or release is includable in the donee's estate just as if the donee had retained possession of the power at death and is taxable to those to whom the property is appointed in case the power is exercised, or to those who take in default of the exercise in case the power is released.

The general power of appointment is considered to have been exercised for the purposes of this rule when the nature of the disposition is such that if it were a transfer or disposition of the donee's property, the transfer would be subject to inheritance tax under Iowa Code section 450.3. The power is considered exercised in the following three nonexclusive classes of cases: (1) where there has been some reference in the will or other instrument to the power; (2) the will or other instrument contains a reference to the property which is the subject on which the power is to be executed; (3) where the provision in the will or other instrument executed by the donee of the power would otherwise be ineffectual or a mere nullity; in other words, the provision would have no operation except as an execution of the power. *In re Trust of Stork,* 233 Iowa 413, 421, 9 N.W.2d 273 (1943). For the purposes of section 450.3(4), a release of a general power is considered to be a transfer of the property subject to the power to those who would take in default if the power was not exercised.

900.5(11) *Qualified terminable interest property (QTIP).*

a. In general. Effective for estates of decedents dying on or after July 1, 1985, property passing from the decedent grantor-donor, which qualifies as qualified terminable interest property (QTIP) within the meaning of 26 U.S.C. Section 2056(b)(7)(B) is eligible to be treated for Iowa inheritance tax purposes, if an election is made, as passing in fee to the donee-grantee surviving spouse, in the estate of the grantor-donor decedent, subject to the provisions of law and this subrule. If the election is made, the qualified property, unless it is disposed of prior to death, shall be included in the gross estate of the surviving spouse and treated as passing in fee to those succeeding to the remainder interest in the qualified property.

b. Property transfers eligible. Five factors are relevant in determining whether property passing from a decedent grantor-donor is eligible for the Iowa qualified terminable interest election. They are: (1) the death of the decedent-transferor, but not necessarily the transfer, must have occurred on or after July 1, 1985; (2) the property must meet the qualifications required in 26 U.S.C. Section 2056(b)(7)(B), or in the case of a gift within three years prior to the decedent-transferor's death, the qualifications in 26 U.S.C. Section 2523(f); (3) a valid federal election must have been made on a required federal return with respect to the qualified property for federal estate tax purposes or, for federal gift tax purposes, if the transfer occurred within three years prior to the transferor's death; and (4) the property must be included in the decedent-transferor's gross estate for Iowa inheritance tax purposes, either because the transfer occurred at death or within three years prior to the transferor's death; and (5) Iowa must have constitutional nexus with the surviving spouse or QTIP property.

If property is not eligible for an Iowa qualified terminable interest election, or if eligible, but an Iowa election is not made, it is not included in the estate of the surviving spouse grantee-donee for inheritance tax purposes by reason of Iowa Code section 450.3. The fact that the qualified property is included in the estate of the surviving spouse for federal estate tax purposes does not necessarily mean the property is automatically included in the surviving spouse's Iowa gross estate.

The treatment of the qualified property in both the grantor-donor's and the surviving spouse's estates for Iowa inheritance tax purposes is determined by the Iowa election, or lack of an election, being made in the grantor-donor's estate.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A died testate, a resident of Iowa, July 2, 1995, leaving a surviving spouse, B, and two children, C and D. On February 1, 1992, A transferred by deed a 160-acre Iowa farm to spouse B for life, with the remainder at B's death to two children, C and D. An election was made under 26 U.S.C. Section 2523(f) to treat the gift of the 160-acre farm as passing entirely to B in fee.

Upon A's death the 160-acre farm is not part of A's gross estate either for federal estate or for Iowa inheritance tax purposes because the transfer was made more than three years prior to death. However, upon the death of B, the surviving spouse, the 160 acres is included in B's gross estate (unless disposed of prior to death) for federal estate tax purposes, but is not included in B's Iowa gross estate. The transfer by A took place more than three years prior to death, and therefore is not included in A's Iowa estate and is not eligible for an Iowa qualified terminable interest election.

EXAMPLE 2. On October 1, 1992, grantor A executed a revocable inter vivos trust which consisted of cash and a 160-acre Iowa farm. Under the terms of the trust agreement A was to receive the trust income for life and upon A's death the trustee was to pay the trust income to A's spouse, B, for life, with the power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the corpus was to be paid to A's children, C and D. A died July 2, 1995, and the personal representative elected to treat the trust assets as passing entirely in fee to the surviving spouse, B, for federal estate tax purposes. An Iowa qualified terminable interest election was not made. In this fact situation, the election qualified the trust assets for the marital deduction for federal estate tax purposes. For Iowa inheritance tax purposes, since an Iowa election was not made, the trust assets are taxed on the basis of a life estate passing to B, the surviving spouse, and the remainder passing to the children, C and D. Upon B's death, the trust corpus will be included in B's estate for federal estate tax purposes, but not in B's estate for Iowa inheritance tax purposes, because an Iowa qualified terminable interest election was not made in A's estate.

c. The qualified terminable interest election—in general. The election to treat qualified terminable interest property as passing entirely in fee to the surviving spouse in the estate of the decedent grantor-donor is an affirmative act. In the event an election is not made, the qualified property will be treated as a life estate passing to the surviving spouse with a remainder over as provided in Iowa Code section 450.3(4).

An Iowa election cannot be made unless an election has been made on the same qualified property for federal estate tax purposes on a required federal return, or in case of a gift made within three years of the decedent grantor-donor's death, for federal gift tax purposes. However, even though a federal election has been made, the personal representative of the decedent grantor-donor's estate has the option to either make or not to make the election with respect to the qualified property for Iowa inheritance tax purposes. It is sufficient for Iowa inheritance tax purposes that a valid federal election has been made. What constitutes a valid election for federal estate or gift tax purpose is determined under applicable federal law and practice and not by the department.

However, it is permissible for Iowa inheritance tax purposes to make an election for a smaller but not larger percentage of the qualified property than was made for federal estate or gift tax purposes. These general principles can be illustrated by the following examples:

EXAMPLE 1. Decedent-grantor A created a revocable inter vivos trust on October 15, 1992, which was funded by $200,000 in cash and a 160-acre Iowa farm worth $200,000. The trust provided that the trustee pay the income to A for life and upon A's death, the trustee was to pay the income to A's surviving

spouse B for life, with power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the principal was to be distributed to A's two children, C and D.

A died on July 2, 1995, and the principal of the trust is included in A's gross estate both for federal estate and Iowa inheritance tax purposes because the trust was revocable and A retained the income for life. A's personal representative elected to treat 50 percent of the trust assets as qualified terminable interest property for federal estate tax purposes. A's personal representative elected not to treat the qualified property as passing to B for Iowa inheritance tax purposes. This is permissible because the personal representative has the option to either elect or not to elect to treat 50 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes.

EXAMPLE 2. Same factual situation as Example 1. A's personal representative elects to treat only 25 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes. This is permissible because the personal representative is not required to make an election on all of the qualified terminable interest property on which the federal election has been made. It is sufficient that a federal election has been made for at least as large a percentage of the qualified property on which the Iowa election is made. However, an Iowa election cannot be made for a larger percentage of the qualified property than the percentage made on the federal election.

EXAMPLE 3. Same factual situation as Example 1. In this example, A's personal representative, for Iowa inheritance tax purposes, purports to elect to treat the $200,000 cash in the trust as passing in fee to the surviving spouse, but not the 160-acre Iowa farm, which is also valued at $200,000. Although the federal estate tax election is for 50 percent of the qualified property, the Iowa election is invalid even though it is made in respect to an asset which is equal in value to 50 percent of the trust principal. If the election is made for less than all of the qualified terminable interest property, the election must be for a fraction of all the qualified property. The personal representative is not permitted to select for the election some qualified assets and reject others. See Federal Estate Tax Regulation 20.2056-1(b).

d. The election—manner and form. The qualified terminable interest election shall be in writing and made by the personal representative of the decedent grantor-donor's estate on the Iowa inheritance tax return. The election once made shall be irrevocable. If the election is not made on the first inheritance tax return, the election may be made on an amended return, provided the amended return is filed on or before the due date of the return (taking into consideration any extensions of time granted to file the return and pay the tax due). The personal representative may make an election on a delinquent return, provided it is the first return filed for the estate. The filing for the purpose of protective election is not allowed. Failure to make the election on the first return filed after the due date has passed precludes making an election on a subsequent return. See 26 U.S.C. Section 2056(b)(7)(B)(V) and Internal Revenue Service Letter Ruling 8418005.

The election consists of two affirmative acts performed by the personal representative on the inheritance tax return: (1) by answering in the affirmative the question—Is the estate making a qualified terminable interest election with respect to the qualified property? and (2) by computing the share of the surviving spouse to include the qualified terminable interest property on which the election was made. In the event of an inconsistency in complying with the two requirements, the treatment given to the share of the surviving spouse shall be controlling.

e. Disposition of qualified property prior to death. A disposition of all or part of the qualified property, which was the subject of the qualified terminable interest election, prior to the death of the surviving spouse, voids the election as to that portion of the property disposed of that is not retained by the surviving spouse. In this event, the portion of the qualified property not retained by the surviving spouse shall be taxed to those succeeding to the remainder interests in the disposed property as if the tax on the remainder interest had been deferred under Iowa Code sections 450.44 to 450.49. Except in the case of special use valuation property, the tax shall be based on the fair market value of the amount of the qualified property not retained by the surviving spouse at the time the property was disposed of. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950), see subrule 900.11(5) for taxation of remainder interests when the tax is deferred. The alternate valuation date cannot be used in computing the tax. See subrule 900.10(2). If QTIP property has been valued at its special use value under Iowa

Code chapter 450B, and is disposed of prior to the death of the surviving spouse, the portion of the QTIP property not retained by the surviving spouse shall be valued for taxation as follows:

1. At its special use value at the time of its disposition, if the QTIP property remains in qualified use under 26 U.S.C. Section 2032A.

2. At its fair market value at the time of its disposition, if there is a cessation of the qualified use under 26 U.S.C. Section 2032A. In case there is a cessation of the qualified use, the recapture tax provisions of Iowa Code section 450B.3 shall not apply. The tax on the remainder interest is treated as a payment of tax deferred and subject to the rules on deferred tax and not a recapture, with interest, of the tax originally imposed in the decedent grantor-donor's estate.

f. Inclusion in the estate of the surviving spouse.

(1) Upon the death of the surviving spouse the qualified terminable interest property, which was the subject of an election, that was not disposed of prior to death, shall be included in the gross estate of the surviving spouse and be treated as if it passed in fee from the surviving spouse to those succeeding to the remainder interests. The included QTIP property will receive a stepped up basis for gain or loss as property acquired from a decedent. See 26 U.S.C. Section 1014(b)(10). The relationship of the surviving spouse to the owners of the remainder interest shall determine whether the individual exemptions provided for in Iowa Code section 450.9 apply and which tax rate in Iowa Code section 450.10 shall be applicable.

(2) Qualified property included in the estate of the surviving spouse shall be valued as if it passed from the surviving spouse in fee and shall be valued either (1) at the time of the surviving spouse's death under the provisions of Iowa Code section 450.37 and rule 701—900.9(450), or at its special use value under Iowa Code chapter 450B and rule 701—900.8(450B), if the real estate is otherwise qualified; or (2) at the alternate valuation date under the provisions of Iowa Code section 450.37(1)*"b"* and rule 701—900.10(450), if the property is otherwise eligible.

(3) This subrule can be illustrated by the following examples:

EXAMPLE 1. Decedent A died testate on July 2, 2017, survived by a spouse, B, aged 65, a child, C, and C's stepchildren, D and E. Under A's will, all property was left in trust to pay all of the income to B for life. Upon B's death, the trust was to terminate and the principal was to be divided equally between D and E, who are the stepchildren of child C. The personal representative elected to treat the trust assets as passing entirely in fee to surviving spouse B. The net corpus of the trust consists of a 160-acre farm valued at $250,000 and personal property valued at $200,000.

Tax on the basis of all property passing in fee to B	
Share	Tax
$450,000	$0

EXAMPLE 2. Same facts as Example 1, with the exception that the personal representative did not make an Iowa qualified terminable interest election. In this fact situation, the trust assets are taxed on the basis of a life estate passing to the surviving spouse B with a remainder over to D and E.

Share		Tax
Spouse B: Life estate factor .42226		
$450,000 × .42226 = $190,017		-0-
D's share ½ remainder factor .57774		
$450,000 × .57774 ÷ 2 = $129,991.50		$15,498.73
E's share—same as D's share $129,991.50		$15,498.73
	Total $450,000.00	$30,997.46

In Example 1, the qualified terminable interest election results in no inheritance tax. However, as shown in Example 2, it would cost D and E $30,997.46 if the election had not been made.

EXAMPLE 3. G, the surviving spouse of F, died testate, a resident of Iowa, on October 15, 2017. Under the terms of G's will, G's grandchildren, H and I, inherit G's entire estate in equal shares. G's net estate consists of $200,000 in personal property and a 160-acre Iowa farm with a value of $250,000 both of which were the subject of a qualified terminable interest election in F's estate and in which H and I own the remainder interest. G's net estate also consisted of $100,000 in intangible personal property that G owned in fee simple.

G's net estate for Iowa inheritance tax purposes consists of the following:

$200,000, personal property from F's estate.

$250,000, 160-acre farm from F's estate.

$100,000, owned by G in fee simple.

$550,000 Total

The shares of H and I and their tax owed in G's estate are computed as follows:

Share		Tax
Beneficiary H: ½ of the net estate, or		
	$275,000	$0
Beneficiary I: (same as H)	$275,000	$0
Totals	$550,000	$0

g. The QTIP tax credit and the credit for tax on prior transfers. The credit for the additional tax paid by the surviving spouse in the estate of the decedent grantor-donor on property, which was the subject of a qualified terminable interest election, is governed exclusively by the provisions of Iowa Code section 450.3 and these rules. The credit for tax paid on prior transfers allowable under Iowa Code section 450.10(6) shall not apply. However, property received by the surviving spouse from the estate of the decedent grantor-donor, which was not the subject of a qualified terminable interest election, is eligible for the credit for the tax paid on a prior transfer, if the conditions of Iowa Code section 450.10(6) are otherwise met.

900.5(12) *Annuities.* Annuities in general, including the earnings, are considered to be taxable under Iowa Code section 450.3(3) as a transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. *In re Estate of English,* 206 N.W.2d 305 (Iowa 1973); *In re Endemann's Estate,* 307 N.Y. 100, 120 N.E.2d 514 (1954); *Cochrane v. Commission of Corps & Taxation,* 350 Mass. 237, 214 N.E.2d 283 (1966). For exceptions for employee-sponsored retirement plans, including annuities, see 900.5(13).

900.5(13) *Employer-provided or employer-sponsored retirement plans and individual retirement accounts.* Iowa Code section 450.4(5) provides an exemption on that portion of the decedent's interest in an employer-provided or employer-sponsored retirement plan or on that portion of the decedent's individual retirement account that will be subject to federal income tax when paid to the beneficiary. This exemption applies regardless of the identity of the beneficiary and regardless of the number of payments to be made after the decedent's death.

For the purposes of this exemption:

a. An "individual retirement account" includes an individual retirement annuity or any other arrangement as defined in Section 408 of the Internal Revenue Code.

b. An "employer-provided or employer-sponsored retirement plan" includes a qualified retirement plan as defined in Section 401 of the Internal Revenue Code, a governmental or nonprofit employer's deferred compensation plan as defined in Section 457 of the Internal Revenue Code, and an annuity as defined in Section 403 of the Internal Revenue Code.

EXAMPLE 1. The decedent was a participant in a qualified retirement plan through the decedent's employer. The beneficiary of the retirement plan is the decedent's niece. The balance in the retirement plan will be fully subject to federal income tax and included as net income pursuant to Iowa Code section

422.7 when paid to the beneficiary. As a result, Iowa inheritance tax would not be imposed on the value of the retirement plan.

EXAMPLE 2. The decedent was a participant in a qualified retirement plan through the decedent's employer. The beneficiary of the pension is the decedent's niece. A portion of the payments received by the niece will be fully subject to federal income tax and included as net income pursuant to Iowa Code section 422.7. As a result, Iowa inheritance tax would not be imposed on the value of the portion of payments included as net income. However, the remaining portion of the payments not reported as net income pursuant to Iowa Code section 422.7 would be subject to Iowa inheritance tax. See Iowa Code section 450.4.

An exemption from Iowa inheritance tax for a qualified plan does not depend on the relationship of the beneficiary to the decedent. Payments under a qualified plan made to the estate of the decedent are exempt from Iowa inheritance tax. See *In re Estate of Heuermann,* Docket No. 88-70-0388 (September 21, 1989). In addition, for the purpose of determining the taxable or exempt status of payments under a qualified plan, it is not relevant that the decedent rolled over or changed the terms of payment prior to death. Taxation or exemption of payments made under a qualified plan is determined at the date of the decedent's death.

900.5(14) *Distribution of trust property.* Property of a trust can be divided into two or more trusts, or one or more separate trusts can be consolidated with one or more other trusts into a single trust by dividing the property in cash or in kind, including in undivided interests, by pro-rata or non-pro-rata division or in any combination thereof. Division of property between trusts in this manner does not result in a "sale" of the divided property and a corresponding taxable gain.

900.5(15) *Qualified tuition plans exempt.* Effective for estates of decedents dying on or after July 1, 2008, in the event that the decedent was the sole plan participant in a qualified school tuition plan, as defined in Section 529 of the Internal Revenue Code; or in the event that a named co-plan participant does not have a lineal relationship to the named beneficiary of the qualified tuition plan, the value of the decedent's interest in the qualified tuition plan is not subject to Iowa inheritance tax and therefore is not includable in the decedent's gross estate for tax purposes. This provision applies only to qualified tuition plans in existence on or after July 1, 1998.

900.5(16) *Qualified ABLE plans exempt.* Effective for estates of decedents dying on or after January 1, 2016, the value of the decedent's interest in the Iowa ABLE savings plan trust is not subject to Iowa inheritance tax and therefore is not includable in the decedent's gross estate for tax purposes. The value of the decedent's interest in an ABLE savings program administered by another state with which the Iowa treasurer of state has entered into an agreement allowing Iowa residents to participate in the other state's qualified ABLE program under the terms of Iowa Code section 12I.10 is also not subject to Iowa inheritance tax if the decedent is an Iowa resident. For more information on qualified plans administered by other states, see Iowa Code section 12I.10 and rule 701—302.81(422).

This rule is intended to implement Iowa Code sections 422.7, 450.2, 450.3, 450.4(5), 450.8, 450.12, 450.37, 450.91, 633.699, and 633.703A and Iowa Code section 450.4 as amended by 2015 Iowa Acts, chapter 137.

[**ARC 1137C**, IAB 10/30/13, effective 12/4/13; **ARC 2633C**, IAB 7/20/16, effective 8/24/16; **ARC 2691C**, IAB 8/31/16, effective 10/5/16; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—900.6(450) The net estate.

900.6(1) *Liabilities deductible.*

a. Debts owing by decedent. A debt, to be allowed as a deduction in determining the net estate under Iowa Code section 450.12, must be the liability of the decedent and also be owing and not discharged at the time of the decedent's death. The amount allowable as a deduction is the principal amount due, plus interest accruing to the day of the decedent's death. If the decedent is not the only person liable for the debt, only a portion of the debt shall be deducted for inheritance tax purposes. The portion deducted is based on the number of solvent obligors. If a joint and several debt has more than one obligor and one obligor pays the remaining balance owed on the debt, the obligor who pays the remaining debt has a right of contribution for payment of the debt against the other solvent obligors. If

the decedent is the obligor and the estate pays the remaining balance of the debt, the estate must list the right of contribution as an asset on the Iowa inheritance tax return. *In re Estate of Tollefsrud,* 275 N.W.2d 412 (Iowa 1979); *In re Estate of Thomas,* 454 N.W.2d 66 (Iowa App. 1990); *Estate of Pauline Bladt,* Department of Revenue and Finance, Hearing Office Decision, Docket No. 95-70-1-0174 (December 16, 1996). The term "debt owing by the decedent" is not defined in Iowa Code section 450.12. However, Iowa Code section 633.3(10) defines "debts" as including liabilities of the decedent which survive, whether arising in contract, tort, or otherwise.

The term "debt of the decedent" does not include taxes, which are an impost levied by authority of government upon its citizens or subjects for the support of the state. *Eide v. Hottman,* 257 Iowa 263, 265, 132 N.W.2d 755 (1965). Please note, that this is a nonexclusive example of "debt of the decedent." Promissory notes executed by the decedent without consideration are not debts of the decedent and are not allowable as a deduction in determining the net estate subject to tax. *In re McAllister's Estate,* 214 N.W.2d 142 (Iowa 1974). Payments to persons in compromise of their claim to a portion of the estate made by those persons who take from the decedent are not debts nor treated as expenses of settlement. *In re Estate of Bliven,* 236 N.W.2d 366, 371 (Iowa 1975); *In re Estate of Wells,* 142 Iowa 255, 259, 260, 120 N.W. 713 (1909).

Iowa Code section 450.12 and Internal Revenue Code Section 2053 provide that debts owing by the decedent to be allowable in computing the net estate must be the type of obligation of the decedent for which a claim could be filed and be enforced in the probate proceedings of the estate. *In re Estate of McMahon,* 237 Iowa 236, 21 N.W.2d 581 (1946); *In re Estate of Laartz,* Cass County District Court, Probate No. 9641 (1973); *In re Estate of Tracy,* Department of Revenue and Finance, Hearing Officer Decision Docket No. 77-167-3-A (1977). Filing a claim in probate proceedings is not a prerequisite for the allowance of the liability as a deduction in computing the net estate. An allowable liability is deductible whether or not the liability is legally enforceable against the decedent's estate. Claims in probate founded on a promise or agreement are deductible only to the extent they were contracted bona fide and for an adequate and full consideration. *In re McAllister's Estate,* 214 N.W.2d 142 (Iowa 1974).

The debt must have been paid prior to the filing of the inheritance tax return, or if the debt is not paid at the time the final inheritance tax return is filed (which is frequently the case in installment obligations) the burden is on the taxpayer to establish, if requested by the department, that the debt will be paid at a future date. The validity of a claim in probate based on a liability of the decedent is subject to review by the department. *In re Estate of Stephenson,* 234 Iowa 1315, 1319, 14 N.W.2d 684 (1944).

If any doubt or ambiguity exists whether an item is deductible or not, it is to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish that an item is deductible. *In re Estate of Waddington,* 201 N.W.2d 77 (Iowa 1972).

The department may require the taxpayer to furnish reasonable proof to establish the deductible items such as, but not limited to, canceled checks in payment of an obligation, copies of court orders allowing claims against the estate, attorney and fiduciary fees, allowances for the surviving spouse, and copies of notes and mortgages.

b. Mortgages—decedent's debt. A mortgage or other encumbrance securing a debt of the decedent on Iowa property in which the decedent had an interest is allowable as a deduction in determining the net estate in the same manner as an unsecured debt of the decedent, even though it may be deducted from different shares of the estate than unsecured debts. (See Iowa Code section 633.278.) However, if the debt of the decedent is secured by property located outside Iowa, which is not subject to Iowa inheritance tax, the debt is allowable as a deduction in determining the net estate, only in the amount the debt exceeds the value of the property securing the debt.

c. Mortgages—not decedent's debt. If the gross estate includes property subject to a mortgage or other encumbrance which secures a debt which is not enforceable against the decedent, the amount of the debt, including interest accrued to the day of death, is deductible, not as a debt of the decedent, but from the fair market value of the encumbered property. The deduction is limited to the amount the decedent would have had to pay to remove the encumbrance less the value, if any, of the decedent's right of recovery against the debtor. See *Home Owners Loan Corp. v. Rupe,* 225 Iowa 1044, 1047, 283 N.W. 108 (1938), for circumstances under which the right of subrogation may exist.

d. Mortgages—nonprobate property. A debt secured by property not subject to the jurisdiction of the probate court, such as, but not limited to, jointly owned property and property transferred within three years of death is deducted in the same manner as a debt secured by probate property. The fact the property is includable in the gross estate is the controlling factor in determining the deductibility of the debt (providing the debt is otherwise deductible).

e. Inheritance and accrued taxes.

(1) Inheritance tax. The inheritance tax imposed in the decedent's estate is not a tax on the decedent's property nor is it a state tax due from the estate. It is a succession tax on a person's right to take from the decedent. The tax is the obligation of the person who succeeds to property included in the gross estate. *Wieting v. Morrow,* 151 Iowa 590, 132 N.W. 193 (1911); *Waterman v. Burbank,* 196 Iowa 793, 195 N.W. 191 (1923). Therefore, inheritance tax is not a deduction in determining the net estate of the decedent in which the tax was imposed. However, if a taxpayer dies owing an inheritance tax imposed in another estate, the tax imposed in the prior estate, together with penalty and interest owing, if any, is a deduction as a state tax due in the deceased taxpayer's estate.

(2) Accrued taxes. In Iowa, property taxes accrue on the date that they are levied even though they are not due and payable until the following July 1. *In re Estate of Luke,* 184 N.W.2d 42 (Iowa 1971); *Merv E. Hilpipre Auction Co. v. Solon State Board,* 343 N.W.2d 452 (Iowa 1984).

Death terminates the decedent's taxable year for income tax purposes. Federal regulation Section 1.443-1(a)(2), 701—paragraph 700.4(9)*"b."* As a result, the Iowa tax on the decedent's income for the taxable year ending with the decedent's death is accrued on date of death.

In addition, any federal income tax for the decedent's final taxable year is owing at death, even though it is not payable until a later date. Therefore, both the decedent's state and federal income taxes, both for prior years and the year of death, are deductible in computing the taxable estate if unpaid at death.

f. Federal taxes. Deductible under this category are the federal estate taxes and federal taxes owing by the decedent including any penalty and interest accrued to the date of death. Prior to 1983, the federal estate tax was prorated based on the portion of federal estate tax attributable to Iowa property and that attributable to property located outside the state of Iowa. However, currently the deductibility of federal estate tax is treated like other liabilities of the estate. For estates with property located in Iowa and outside the state of Iowa, see the proration computation provided in 900.6(2). The deduction is limited to the net federal tax owing after all allowable credits have been subtracted. Any penalty and interest imposed or accruing on federal taxes after the decedent's death is not deductible.

g. Funeral expenses. The deduction is limited to the expense of the decedent's funeral, which includes, but is not limited to, flowers, cost of meals, cards and postage. Expenses that are not deductible include, but are not limited to, family travel expenses. If the decedent at the time of death was liable for the funeral expense of another, such expense is categorized as a debt of the decedent and is deductible subject to the same conditions as other debts of the decedent. *In re Estate of Porter,* 212 Iowa 29, 236 N.W. 108 (1931). A devise in the decedent's will, or a direction in a trust instrument, to pay the funeral expense of a beneficiary upon death is an additional inheritance in favor of the beneficiary and not a funeral expense deductible in the estate of the testator or grantor. Funeral expense is the liability of the estate of the person who has died. *In re Estate of Kneebs,* 246 Iowa 1053, 70 N.W.2d 539 (1955).

What constitutes a reasonable expense for the decedent's funeral depends upon the facts and circumstances in each particular estate. Factors to be considered include, but are not limited to: the decedent's station in life and the size of the estate, *Foley v. Brocksmit,* 119 Iowa 457, 93 N.W. 344 (1903); and the decedent's known wishes (tomb rather than a grave), *Morrow v. Durant,* 140 Iowa 437, 118 N.W. 781 (1908). Funeral expense includes the cost of a tombstone or monument. *In re Estate of Harris,* 237 Iowa 613, 23 N.W.2d 445 (1946). A reasonable fee or honorarium paid to the officiating clergy is a deductible funeral expense. *In re Estate of Kneebs,* 246 Iowa 1053, 1058, 70 N.W.2d 539 (1955). It is not a prerequisite for deductibility that a claim for funeral expenses be filed and allowed in the probate proceedings. It is sufficient that the expense be paid whether or not the claim is legally enforceable against the decedent's estate. The deduction allowable is limited to the net expense of the decedent's funeral, after deducting any expense prepaid by the decedent, burial

insurance or death benefit, such as the death benefit allowed by the veterans administration or the social security administration.

h. Allowance for surviving spouse and dependents. An allowance for the support of the surviving spouse and dependents to be deductible in determining the net estate for taxation must meet two conditions: First it must be allowed and ordered by the court and second it must be paid from the assets of the estate that are subject to the jurisdiction of the probate court. The allowance is not an additional exemption for the spouse or children. It is part of the costs of administration of the decedent's estate. Iowa Code section 633.374; *In re Estate of DeVries,* 203 N.W.2d 308, 311 (Iowa 1972). Upon request of the department, the taxpayer shall submit a copy of the order of the court providing for the allowance and copies of canceled checks or other documents establishing payment of the allowance.

For the purpose of determining the shares of heirs or beneficiaries for inheritance tax, the allowance is a charge against the corpus of the shares of the estate even though it is paid from the income of the shares. The allowance is included with the other debts and charges for the purpose of abatement of shares to pay the debts and charges of the estate.

i. Court costs. The deduction under this category is limited to Iowa court costs only. *In re Estate of Evans,* 246 Iowa 893, 68 N.W.2d 289 (1955). The term "court costs" is not synonymous with "costs of administration" as defined in Iowa Code section 633.3(8) or "administration expenses" under Section 2053(a) of the Internal Revenue Code. See federal regulation Section 20.2053-3(d). "Court costs" is a narrower term. Court costs are part of costs of administration in Iowa and are an expense of administration under the Internal Revenue Code, but not all costs or expenses of administration are court costs. For example, interest payable on an extension of time to pay the federal estate tax is a cost of administration in the estate in which the federal estate tax is imposed, but it is not part of court costs, and therefore not deductible for inheritance tax purposes.

In general, court costs include only those statutory fees and expenses relating directly to the probate proceeding, carried on the clerk's docket, and paid routinely in the process of closing every estate. *In re Estate of Waddington,* 201 N.W.2d 77, 79 (Iowa 1972). The term "court costs" since August 15, 1975, also includes the expenses of selling property. See Iowa Code sections 450.12 and 633.3(8) and Internal Revenue Code Section 2053 for further details.

j. Additional liabilities that are deductible. Subject to subrules 900.6(4) and 900.6(5), the only liabilities deductible from the gross value of the estate include debts owing by the decedent at the time of death, local and state taxes accrued before the decedent's death, federal estate tax and federal taxes owing by the decedent, a sum for reasonable funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to Section 2053 of the Internal Revenue Code.

(1) Criteria for deductible administration expenses under Section 2053 of the Internal Revenue Code. Administration expenses must meet certain requirements to be allowable deductions under Section 2053 of the Internal Revenue Code. To be allowable deductions, expenses must meet the following conditions:

1. The expenses must be payable out of property subject to claims;

2. The expenses are allowable (not based on the deductible amount) by the law governing the administration of the decedent's estate;

3. The expenses are actually and necessarily incurred in the administration of the estate. Administration expenses are limited to those expenses incurred in the settlement of the estate and the transfer of the estate property to beneficiaries and trustees, including an executor that is a trustee. Expenses that are not essential to the settlement of the estate, but are incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions; and

4. The allowable amount of expenses for deduction is limited to the value of property included in the decedent's gross estate and subject to claims, plus amounts paid out of the property not subject to claims against the decedent's estate, on or before the last day of the ninth month after death or within any granted extension(s) of time for filing the return. "Property subject to claims" is defined as the property includable in the gross estate which bears the burden or would bear the burden under law for payment of the deduction in the final adjustment and settlement of the decedent's estate, less an initial

deduction allowable under Section 2054 of the Internal Revenue Code, for any losses for casualty or theft attributable to such property and incurred during the settlement of the estate.

(2) Allowable administration expenses. Subject to the limitations in paragraph *"a"* of this subrule, allowable administration expenses under Section 2053 of the Internal Revenue Code include costs and fees incurred in the collection of assets, payment of debts, distribution of property to entitled persons, executor's commission, attorney's fees, and miscellaneous administration expenses. Miscellaneous administration expenses include costs or fees for surrogates, accountants, appraisers, clerk hire, storing or maintaining property of the estate, and selling the property of the estate. Expenses for preserving and caring for the property do not include expenditures for additions or improvements or expenses for a longer period than the executor is reasonably required to retain the property. Expenses for selling property of the estate are limited to those for sales that are necessary in order to pay the decedent's debts, expenses of administration, and taxes, preserve the estate, or effect distribution. Expenses for selling the property include brokerage fees or auctioneer fees and may include the expenses for a sale of an item in a bona fide sale that is below the fair market value of the item. The allowable selling expense for an item sold below its fair market value to a dealer in such items is the lesser of the amount by which the fair market value of the item on the valuation date exceeded the proceeds from the sale or the amount by which the fair market value of the item on the date of the sale exceeded the proceeds of the sale.

900.6(2) *Prorated liabilities.*

a. The amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator. For the purpose of apportionment of the liabilities, the term "gross estate" means the gross estate for federal estate tax purposes. Provided, if the federal gross estate formula produces a grossly distorted result then, subject to the approval of the department, an alternate apportionment formula may be used either by the department or the taxpayer which fairly represents the particular facts of the estate.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

b. Liabilities that must be prorated. If the gross estate includes property with a situs outside Iowa, the liabilities that must be prorated are: (1) court costs, both foreign and domestic; (2) unsecured debts of the decedent regardless of where the debt was contracted; (3) federal and state income tax, including the tax on the decedent's final return, federal estate, gift and excise tax, and state and local sales, use and excise tax; (4) expenses of the decedent's funeral and burial, regardless of the place of interment; (5) allowances for the surviving spouse and children allowed by the probate court in Iowa or another jurisdiction; (6) the expense of the appraisal of property for the purpose of assessing a state death or succession tax; (7) the fees and necessary expenses of the personal representative and the personal representative's attorney allowed by order of court, both foreign and domestic; (8) the costs of the sale of real and personal property, both foreign and domestic, if not otherwise included in court costs; and (9) the amount paid by the personal representative for a bond, both foreign and domestic.

c. Liabilities that are not prorated. Liabilities secured by a lien on property included in the gross estate are to be allocated in full to the state of situs. These are liabilities secured by: (1) mortgages, mechanic's liens and judgments; (2) real estate taxes and special assessments on real property; (3) liens for an obligation to the United States of America, a state or any of its political subdivisions; and (4) any other lien on property imposed by law for the security of an obligation.

900.6(3) *Liabilities deductible from property not subject to the payment of debts and charges.*

a. Estates with all of the property located in Iowa. Subject to the special provisions in 900.6(3)*"c,"* the liabilities deductible under Iowa Code section 450.12 may be deductible in whole or in part from property includable in the gross estate for inheritance tax purposes which under Iowa

debtor-creditor law is not liable for the payment of the debts and charges of the estate under the following terms and conditions:

(1) The application of liabilities.

1. The liabilities must be paid. If a liability is not paid in full, the amount deductible is limited to the amount paid. If the amount claimed is not certified as paid by the time the inheritance tax return is filed, the statute requires that the director must be satisfied that the liabilities, or portions thereof deductible, will be paid.

2. The liability can be deducted only from property that is included in the gross estate for Iowa inheritance tax purposes. This rule would exclude, among others, that portion of joint tenancy property which is excluded from the gross estate, wrongful death proceeds, gifts to each donee made within three years of death up to an amount equal to the annual federal gift tax exclusion, and property with a situs outside Iowa.

3. The property included in the gross estate that is under Iowa debtor-creditor law subject to the payment of the deductible liabilities must first be applied to the liabilities, and only after this property has been exhausted can the excess liabilities be applied to the remaining property included in the gross estate.

4. Any excess liabilities remaining unpaid after exhausting the property subject to the payment of the liabilities must be allocated to the remaining property included in the gross estate for inheritance tax purposes on the basis of the ratio the value of each person's share of the remaining property in the gross estate bears to the total value of the remaining property included in the gross estate.

(2) General rules.

1. The source of the funds used for payment of the excess liabilities is not relevant to the allowance of the deduction. It is sufficient for the allowance of the deduction that the liability be paid.

2. The applicability of the statute is limited to the deduction for inheritance tax purposes of those liabilities listed in Iowa Code subsection 450.12(1). It neither enlarges nor diminishes the rights of creditors under existing Iowa law.

3. The statute is not limited to estates which are probated and subject to the jurisdiction of the probate court. The statute also applies to estates which file an inheritance tax return for a tax clearance (CIT proceedings) or those otherwise not probated such as, but not limited to, inter vivos trusts whose assets are subject to inheritance tax, estates consisting of joint tenancy with right of survivorship property, estates whose assets consist of transferred property with a reserved life use or interest, estates whose assets consist of gifts made within three years of the decedent's death and estates consisting entirely of qualified terminal interest property (QTIP) in the estate of the surviving spouse.

The statute will apply to any estate when any share of the estate will remain taxable after being reduced by the liabilities in Iowa Code subsection 450.12(1) which are lawfully charged to the share and the deduction of any statutory exemption. Excess liabilities must be prorated over all of the property not subject to debts and charges regardless of whether or not the property is part of a taxable share.

b. Estates with part of the property located outside Iowa. Iowa Code section 450.12(2) and subrule 900.6(2) require that the liabilities deductible be prorated in those estates where a portion of the property included in the gross estate has a situs outside Iowa. Subject to the special provision in 900.6(3)*"c,"* in these estates the portion of the liabilities deductible which is allocated to the Iowa property under the proration formula must first be applied to the Iowa situs property which is subject to the payment of the liabilities. Any portion of the liabilities allocated to Iowa remaining unpaid may then be applied to the other Iowa property included in the gross estate subject to the same limitations provided for in 900.6(3)*"a"*(1)"1" to "4."

c. Special rule for liabilities secured by property included in the gross estate. If a liability which is deductible under Iowa Code section 450.12(1)*"a"* is secured by property included in the gross estate, then the liability is deductible from the specific property that secures the liability, regardless of whether or not the property is subject to the payment of the ordinary debts and charges of the estate. If the liability

exceeds the value of the property that secures it and is the obligation of the decedent, then any excess liability is deductible under the same rules that govern unsecured obligations.

900.6(4) *Resident and nonresident deductions distinction abolished.* Effective for estates of decedents dying on or after July 1, 1983, the domicile of the decedent is not relevant in determining whether a liability is deductible in computing the net estate. In the case of *In re Estate of Evans,* 246 Iowa 893, 68 N.W.2d 289 (1955) applies only to estates of decedents dying prior to July 1, 1983. However, the amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

This rule is intended to implement Iowa Code sections 450.7(1), 450.12, 450.22, 450.24, 450.38, 450.89, 633.278, and 633.374.

[**ARC 1137C**, IAB 10/30/13, effective 12/4/13; **ARC 1545C**, IAB 7/23/14, effective 8/27/14; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—900.7(450) Life estate, remainder and annuity tables—in general. For estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986, the value of a life estate in property, an annuity for life and the value of a remainder interest in the property, shall be computed by the use of the commissioners' standard ordinary mortality table at the rate of 4 percent per annum.

900.7(1) *Tables for life estates and remainders.* This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. The two factors on the same line on the next page added together equal 100 percent. Multiply the corpus of the estate by the first factor to obtain the value of the life estate. Use the second factor to obtain the value of the remainder interest in the corpus if the tax is to be paid within 12 months after the death of the decedent who created the life estate remainder. If the tax on the remainder is to be paid prior to the death of the life tenant, but after one year from the decedent's death, use the remainder factor opposite the age of the life tenant at the time the tax is to be paid.

Age of Life Tenant	Life Estate	Remainder
0	.90164	.09836
1	.89936	.10064
2	.89900	.10100
3	.89676	.10324
4	.89396	.10604
5	.89104	.10896
6	.88792	.11208
7	.88464	.11536
8	.88120	.11880
9	.87756	.12244
10	.87380	.12620
11	.86984	.13016

Age of Life Tenant	Life Estate	Remainder
12	.86576	.13424
13	.86152	.13848
14	.85716	.14284
15	.85268	.14732
16	.84808	.15192
17	.84336	.15664
18	.83852	.16148
19	.83356	.16644
20	.82840	.17160
21	.82308	.17692
22	.81756	.18244
23	.81184	.18816
24	.80592	.19408
25	.79976	.20024
26	.79336	.20664
27	.78672	.21328
28	.77984	.22016
29	.77268	.22732
30	.76524	.23476
31	.75756	.24244
32	.74960	.25040
33	.74132	.25868
34	.73280	.26720
35	.72392	.27608
36	.71476	.28524
37	.70532	.29468
38	.69560	.30440
39	.68560	.31440
40	.67536	.32464
41	.66488	.33512
42	.65412	.34588
43	.64316	.35684
44	.63192	.36808
45	.62044	.37956
46	.60872	.39128
47	.59680	.40320
48	.58464	.41536

Age of Life Tenant	Life Estate	Remainder
49	.57228	.42772
50	.55972	.44028
51	.54700	.45300
52	.53412	.46588
53	.52104	.47896
54	.50788	.49212
55	.49452	.50548
56	.48108	.51892
57	.46756	.53244
58	.45392	.54608
59	.44024	.55976
60	.42652	.57348
61	.41280	.58720
62	.39908	.60092
63	.38538	.61462
64	.37174	.62826
65	.35817	.64183
66	.34471	.65529
67	.33140	.66860
68	.31829	.68171
69	.30542	.69458
70	.29282	.70718
71	.28048	.71952
72	.26840	.73160
73	.25653	.74347
74	.24481	.75519
75	.23322	.76678
76	.22175	.77825
77	.21045	.78955
78	.19938	.80062
79	.18863	.81137
80	.17826	.82174
81	.16830	.83170
82	.15876	.84124
83	.14960	.85040
84	.14078	.85922
85	.13224	.86776

Age of Life Tenant	Life Estate	Remainder
86	.12395	.87605
87	.11584	.88416
88	.10785	.89215
89	.09990	.90010
90	.09192	.90808
91	.08386	.91614
92	.07563	.92437
93	.06715	.93285
94	.05826	.94174
95	.04866	.95134
96	.03801	.96199
97	.02595	.97405
98	.01275	.98725
99	.00000	1.00000

900.7(2) *Table for an annuity for life.* This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. To find the present value of an annuity or a given amount (specified sum) for life, annualize the annuity payments and multiply the result by the annuity factor in Column 3 opposite the age at the nearest birthday of the person receiving the annuity.

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
0	68.30	22.541
1	67.78	22.484
2	66.90	22.475
3	66.00	22.419
4	65.10	22.349
5	64.19	22.276
6	63.27	22.198
7	62.35	22.116
8	61.43	22.030
9	60.51	21.939
10	59.58	21.845
11	58.65	21.746
12	57.72	21.644
13	56.80	21.538
14	55.87	21.429
15	54.95	21.317

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
16	54.03	21.202
17	53.11	21.084
18	52.19	20.963
19	51.28	20.839
20	50.37	20.710
21	49.46	20.577
22	48.55	20.439
23	47.64	20.296
24	46.73	20.148
25	45.82	19.994
26	44.90	19.834
27	43.99	19.668
28	43.08	19.496
29	42.16	19.317
30	41.25	19.131
31	40.34	18.939
32	39.43	18.740
33	38.51	18.533
34	37.60	18.320
35	36.69	18.098
36	35.78	17.869
37	34.88	17.633
38	33.97	17.390
39	33.07	17.140
40	32.18	16.884
41	31.29	16.622
42	30.41	16.353
43	29.54	16.079
44	28.67	15.798
45	27.81	15.511
46	26.95	15.218
47	26.11	14.920
48	25.27	14.616
49	24.45	14.307
50	23.63	13.993
51	22.82	13.675

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
52	22.03	13.353
53	21.25	13.026
54	20.47	12.697
55	19.71	12.363
56	18.97	12.027
57	18.23	11.689
58	17.51	11.348
59	16.81	11.006
60	16.12	10.663
61	15.44	10.320
62	14.78	9.9770
63	14.14	9.6346
64	13.51	9.2935
65	12.90	8.9543
66	12.31	8.6178
67	11.73	8.2851
68	11.17	7.9572
69	10.64	7.6355
70	10.12	7.3204
71	9.63	7.0121
72	9.15	6.7101
73	8.69	6.4133
74	8.24	6.1203
75	7.81	5.8304
76	7.39	5.5437
77	6.98	5.2612
78	6.59	4.9845
79	6.21	4.7158
80	5.85	4.4566
81	5.51	4.2076
82	5.19	3.9689
83	4.89	3.7399
84	4.60	3.5194
85	4.32	3.3061
86	4.06	3.0988
87	3.80	2.8961

Column 1 Age in Years	Column 2 Life Expectancy in Years	Column 3 4% Annuities $1.00
88	3.55	2.6963
89	3.31	2.4975
90	3.06	2.2981
91	2.82	2.0965
92	2.58	1.8907
93	2.33	1.6787
94	2.07	1.4564
95	1.80	1.2166
96	1.51	.9503
97	1.18	.6487
98	.83	.3189
99	.50	.0000

900.7(3) *Annuity tables when the term is certain.* This table is to be used to compute the present values of two types of annuities: (1) the use of property for a specific number of years and (2) an annuity of a specific amount of money for a number of years certain. To compute the present value of the first annuity, multiply the value of property by 4 percent. Then multiply the result by the annuity factor opposite the number of years of the annuity. Multiply the value of the property by the remainder factor for the present value of the remainder. For the second annuity annualize the payments and multiply the result by the annuity factor opposite the number of years of the annuity. Subtract the present value of the annuity from the value of the property from which the annuity is funded for the remainder value.

Number of Years	Present Value of an Annuity of One Dollar, Payable at the End of Each Year, for a Certain No. of Years	Present Value of One Dollar, Payable at the End of a Certain Number of Years
	ANNUITY	REMAINDER
1	$0.96154	$0.961538
2	1.88609	0.924556
3	2.77509	0.888996
4	3.62990	0.854804
5	4.45182	0.821927
6	5.24214	0.790315
7	6.00205	0.759918
8	6.73274	0.730690
9	7.43533	0.702587
10	8.11090	0.675564
11	8.76048	0.649581
12	9.38507	0.624597
13	9.98565	0.600574
14	10.56312	0.577475

Number of Years	Present Value of an Annuity of One Dollar, Payable at the End of Each Year, for a Certain No. of Years	Present Value of One Dollar, Payable at the End of a Certain Number of Years
	ANNUITY	REMAINDER
15	11.11839	0.555265
16	$11.65230	$0.533908
17	12.16567	0.513373
18	12.65930	0.493628
19	13.13394	0.474642
20	13.59033	0.456387
21	14.02916	0.438834
22	14.45112	0.421955
23	14.85684	0.405726
24	15.24696	0.390121
25	15.62208	0.375117
26	15.98277	0.360689
27	16.32959	0.346817
28	16.66306	0.333477
29	16.98371	0.320651
30	17.29203	0.308319

900.7(4) *Tables for life estates and remainders for estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004.* For estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004, the following tables are to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The table is based on the commissioners' standard ordinary mortality tables of life expectancy, with no distinction being made between the life expectancy of males and females of the same age. As a result, the sex of the recipient is not relevant in computing the value of the property interest received. *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris,* 463 U.S. 1073, 103 S.Ct. 3492, 77 L.Ed.2d 1236 (1983). Valuation is based on the age at the nearest birthday. The following table is to be applied in the same manner as specified in subrule 900.7(1).

1980 CSO-D MORTALITY TABLE
BASED ON BLENDING 50% MALE—50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER	AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER
0	.91904	.08096	50	.61730	.38270
1	.91919	.08081	51	.60576	.39424
2	.91689	.08311	52	.59399	.40601
3	.91443	.08557	53	.58199	.41801
4	.91186	.08814	54	.56979	.43021
5	.90914	.09086	55	.55740	.44260
6	.90629	.09371	56	.54483	.45517
7	.90329	.09671	57	.53206	.46794
8	.90014	.09986	58	.51906	.48094
9	.89683	.10317	59	.50582	.49418
10	.89338	.10662	60	.49234	.50766
11	.88977	.11023	61	.47862	.52138
12	.88603	.11397	62	.46471	.53529
13	.88219	.11781	63	.45064	.54936
14	.87828	.12172	64	.43647	.56353
15	.87429	.12571	65	.42226	.57774
16	.87027	.12973	66	.40801	.59199
17	.86617	.13383	67	.39372	.60628
18	.86200	.13800	68	.37936	.62064
19	.85773	.14227	69	.36489	.63511
20	.85333	.14667	70	.35031	.64969
21	.84878	.15122	71	.33565	.66435
22	.84404	.15596	72	.32098	.67902
23	.83912	.16088	73	.30639	.69361
24	.83399	.16601	74	.29199	.70801
25	.82865	.17135	75	.27787	.72213
26	.82306	.17694	76	.26405	.73595
27	.81724	.18276	77	.25053	.74947
28	.81117	.18883	78	.23727	.76273
29	.80487	.19513	79	.22422	.77578
30	.79833	.20167	80	.21134	.78866
31	.79155	.20845	81	.19866	.80134
32	.78451	.21549	82	.18625	.81375
33	.77723	.22277	83	.17419	.82581
34	.76970	.23030	84	.16260	.83740
35	.76192	.23808	85	.15151	.84849
36	.75389	.24611	86	.14093	.85907

AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER	AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER
37	.74562	.25438	87	.13081	.86919
38	.73710	.26290	88	.12108	.87892
39	.72836	.27164	89	.11163	.88837
40	.71940	.28060	90	.10235	.89765
41	.71022	.28978	91	.09309	.90691
42	.70083	.29917	92	.08368	.91632
43	.69122	.30878	93	.07390	.92610
44	.68138	.31862	94	.06350	.93650
45	.67131	.32869	95	.05221	.94779
46	.66101	.33899	96	.03994	.96006
47	.65046	.34954	97	.02678	.97322
48	.63966	.36034	98	.01321	.98679
49	.62860	.37140	99	.00000	1.00000

900.7(5) *Table for an annuity for life—for estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004. The table is to be used in the same manner as the table listed in subrule 900.7(2).

1980 CSO-D MORTALITY TABLE
BASED ON BLENDING 50% MALE—50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00	AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00
0	73.30	22.976	50	27.45	15.433
1	72.56	22.980	51	26.61	15.144
2	71.63	22.922	52	25.77	14.850
3	70.70	22.861	53	24.94	14.550
4	69.76	22.796	54	24.13	14.245
5	68.82	22.728	55	23.32	13.935
6	67.87	22.657	56	22.52	13.621
7	66.93	22.582	57	21.73	13.301
8	65.98	22.504	58	20.95	12.976
9	65.03	22.421	59	20.18	12.645
10	64.07	22.334	60	19.41	12.308
11	63.12	22.244	61	18.66	11.966
12	62.16	22.151	62	17.91	11.618
13	61.21	22.055	63	17.18	11.266
14	60.27	21.957	64	16.45	10.912

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00	AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00
15	59.32	21.857	65	15.75	10.557
16	58.39	21.757	66	15.05	10.200
17	57.46	21.654	67	14.38	9.843
18	56.53	21.550	68	13.71	9.484
19	55.61	21.443	69	13.06	9.122
20	54.69	21.333	70	12.42	8.758
21	53.77	21.219	71	11.79	8.391
22	52.85	21.101	72	11.17	8.024
23	51.93	20.978	73	10.57	7.660
24	51.01	20.850	74	10.00	7.300
25	50.08	20.716	75	9.44	6.947
26	49.15	20.576	76	8.91	6.601
27	48.23	20.431	77	8.39	6.263
28	47.30	20.279	78	7.90	5.932
29	46.36	20.122	79	7.42	5.605
30	45.43	19.958	80	6.96	5.283
31	44.50	19.789	81	6.52	4.967
32	43.57	19.613	82	6.09	4.656
33	42.64	19.431	83	5.68	4.355
34	41.72	19.242	84	5.29	4.065
35	40.79	19.048	85	4.93	3.788
36	39.87	18.847	86	4.58	3.523
37	38.94	18.640	87	4.26	3.270
38	38.03	18.428	88	3.95	3.027
39	37.11	18.209	89	3.66	2.791
40	36.21	17.985	90	3.37	2.559
41	35.30	17.756	91	3.09	2.327
42	34.41	17.521	92	2.81	2.092
43	33.52	17.280	93	2.52	1.848
44	32.63	17.035	94	2.22	1.588
45	31.75	16.783	95	1.90	1.305
46	30.88	16.525	96	1.56	.999
47	30.01	16.261	97	1.20	.670
48	29.15	15.991	98	.84	.330
49	28.30	15.715	99	.50	.000

900.7(6) *Table for life estates and remainders for estates of decedents dying on or after January 1, 2004.* For estates of decedents dying on or after January 1, 2004, the following table is to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The following table is to be applied in the same manner as specified in subrule 900.7(1).

2001 CSO-D MORTALITY TABLE
BASED ON BLENDING 50% MALE—50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY

4% INTEREST

The two factors across the page equal 100 percent. Multiply the corpus of the estate by the first factor to obtain value of the life estate.

Use the second factor to obtain the remainder interest if the tax is to be paid at the time of probate or to determine if there would be any tax due.

AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER	AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER
0	0.94022	0.05978	60	0.54240	0.45760
1	0.93854	0.06146	61	0.52918	0.47082
2	0.93653	0.06347	62	0.51579	0.48421
3	0.93431	0.06569	63	0.50229	0.49771
4	0.93192	0.06808	64	0.48868	0.51132
5	0.92939	0.07061	65	0.47495	0.52505
6	0.92676	0.07324	66	0.46112	0.53888
7	0.92402	0.07598	67	0.44717	0.55283
8	0.92119	0.07881	68	0.43306	0.56694
9	0.91825	0.08175	69	0.41882	0.58118
10	0.91519	0.08481	70	0.40442	0.59558
11	0.91202	0.08789	71	0.38991	0.61009
12	0.90874	0.09126	72	0.37533	0.62467
13	0.90537	0.09463	73	0.36081	0.63919
14	0.90192	0.09808	74	0.34633	0.65367
15	0.89837	0.10163	75	0.33189	0.66811
16	0.89475	0.10525	76	0.31751	0.68249
17	0.89107	0.10893	77	0.30318	0.69682
18	0.88731	0.11269	78	0.28898	0.71102
19	0.88344	0.11656	79	0.27495	0.72505
20	0.87944	0.12056	80	0.26116	0.73884
21	0.87529	0.12471	81	0.24761	0.75239
22	0.87098	0.12902	82	0.23452	0.76548
23	0.86651	0.13349	83	0.22188	0.77812
24	0.86186	0.13814	84	0.20962	0.79038
25	0.85704	0.14296	85	0.19778	0.80222
26	0.85205	0.14795	86	0.18642	0.81358
27	0.84688	0.15312	87	0.17540	0.82460
28	0.84154	0.15846	88	0.16507	0.83493
29	0.83599	0.16401	89	0.15544	0.84456
30	0.83022	0.16978	90	0.14650	0.85350
31	0.82421	0.17579	91	0.13802	0.86198
32	0.81798	0.18202	92	0.12909	0.87091
33	0.81151	0.18849	93	0.12008	0.87992
34	0.80480	0.19520	94	0.11133	0.88867
35	0.79786	0.20214	95	0.10320	0.89680
36	0.79068	0.20932	96	0.09618	0.90382
37	0.78326	0.21674	97	0.09014	0.90986

AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER	AGE OF LIFE TENANT	LIFE ESTATE	REMAINDER
38	0.77559	0.22441	98	0.08532	0.91468
39	0.76767	0.23233	99	0.07952	0.92048
40	0.75949	0.24051	100	0.07338	0.92662
41	0.75104	0.24896	101	0.06745	0.93255
42	0.74233	0.25767	102	0.06160	0.93840
43	0.73335	0.26665	103	0.05590	0.94410
44	0.72412	0.27588	104	0.05042	0.94958
45	0.71463	0.28537	105	0.04523	0.95477
46	0.70490	0.29510	106	0.04045	0.95955
47	0.69491	0.30509	107	0.03604	0.96396
48	0.68468	0.31532	108	0.03199	0.96801
49	0.67415	0.32585	109	0.02823	0.97177
50	0.66333	0.33667	110	0.02479	0.97521
51	0.65223	0.34777	111	0.02174	0.97826
52	0.64086	0.35914	112	0.01899	0.98101
53	0.62926	0.37074	113	0.01643	0.98357
54	0.61743	0.38257	114	0.01357	0.98643
55	0.60539	0.39461	115	0.01107	0.98893
56	0.59317	0.40683	116	0.00869	0.99131
57	0.58077	0.41923	117	0.00638	0.99362
58	0.56821	0.43179	118	0.00437	0.99563
59	0.55542	0.44458	119	0.00246	0.99754
			120	0.00000	1.00000

900.7(7) *Table for an annuity for life—for estates of decedents dying on or after January 1, 2004.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 2004. The table is to be used in the same manner as the table listed in subrule 900.7(2).

2001 CSO-D MORTALITY TABLE
BASED ON BLENDING 50% MALE—50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

To find the present value of an annuity or a given amount (specified sum) for life, multiply the annuity by the annuity factor opposite the age at the nearest birthday of the person receiving the annuity.

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00
0	78.65	23.505
1	77.73	23.464
2	76.78	23.413
3	75.81	23.358
4	74.84	23.298
5	73.86	23.235

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00
6	72.87	23.169
7	71.89	23.101
8	70.91	23.030
9	69.92	22.956
10	68.94	22.880
11	67.95	22.801
12	66.97	22.718
13	65.99	22.634
14	65.01	22.548
15	64.04	22.459
16	63.07	22.369
17	62.11	22.277
18	61.15	22.183
19	60.19	22.086
20	59.23	21.986
21	58.27	21.882
22	57.32	21.774
23	56.36	21.663
24	55.40	21.547
25	54.45	21.426
26	53.49	21.301
27	52.53	21.172
28	51.58	21.038
29	50.63	20.900
30	49.67	20.755
31	48.72	20.605
32	47.76	20.449
33	46.81	20.288
34	45.85	20.120
35	44.90	19.946
36	43.95	19.767
37	43.00	19.581
38	42.05	19.390
39	41.11	19.192
40	40.16	18.987
41	39.22	18.776
42	38.28	18.558
43	37.35	18.334
44	36.42	18.103
45	35.49	17.866
46	34.57	17.623
47	33.65	17.373
48	32.74	17.117

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00
49	31.84	16.854
50	30.94	16.583
51	30.04	16.306
52	29.15	16.021
53	28.27	15.731
54	27.40	15.436
55	26.54	15.135
56	25.68	14.829
57	24.84	14.519
58	24.01	14.205
59	23.19	13.886
60	22.38	13.560
61	21.57	13.229
62	20.78	12.895
63	20.00	12.557
64	19.24	12.217
65	18.49	11.874
66	17.75	11.528
67	17.02	11.179
68	16.31	10.827
69	15.60	10.470
70	14.91	10.110
71	14.23	9.748
72	13.56	9.383
73	12.91	9.020
74	12.28	8.658
75	11.66	8.297
76	11.06	7.938
77	10.47	7.580
78	9.91	7.224
79	9.36	6.874
80	8.83	6.529
81	8.32	6.190
82	7.84	5.863
83	7.38	5.547
84	6.94	5.240
85	6.52	4.944
86	6.13	4.660
87	5.75	4.385
88	5.41	4.127
89	5.09	3.886
90	4.79	3.662
91	4.51	3.451

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES $1.00
92	4.23	3.227
93	3.94	3.002
94	3.67	2.783
95	3.43	2.580
96	3.21	2.405
97	3.03	2.253
98	2.88	2.133
99	2.71	1.988
100	2.53	1.835
101	2.35	1.686
102	2.18	1.540
103	2.02	1.398
104	1.87	1.260
105	1.72	1.131
106	1.59	1.011
107	1.47	0.901
108	1.35	0.800
109	1.25	0.706
110	1.16	0.620
111	1.08	0.544
112	1.00	0.475
113	0.93	0.411
114	0.86	0.339
115	0.79	0.277
116	0.73	0.217
117	0.67	0.159
118	0.61	0.109
119	0.56	0.062
120	0.50	0.000

This rule is intended to implement Iowa Code sections 450.51 and 450.52.
[**ARC 1137C**, IAB 10/30/13, effective 12/4/13; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—900.8(450B) Special use valuation.

900.8(1) *In general.* Effective for estates of decedents dying on or after July 1, 1982, real estate which has been valued at its special use value under 26 U.S.C. Section 2032A for computing the federal estate tax is eligible to be valued for inheritance tax purposes at its special use value, subject to the limitations imposed by statute and these rules. Special use valuation under the provisions of Iowa Code chapter 450B is in lieu of valuing the real estate at its fair market value in the ordinary course of trade under Iowa Code section 450.37. The valuation of real estate at its special use value must be made on the entire parcel of the real estate in fee simple. The value of undivided interests, life or term estates and remainders in real estate specially valued is determined by (1) applying the life estate, remainder or term tables to the special use value—see rule 701—900.7(450), or (2) by dividing the special use value by the decedent's fractional interest in case of an undivided interest. The eligibility of real estate for special use value is not limited to probate real estate. Real estate transfers with a retained life use or interest,

real estate held in joint tenancy, real estate transferred to take effect in possession or enjoyment at death, real estate held by a partnership or corporation and real estate held in trust are noninclusive examples of real estate not subject to probate that may be eligible for special use valuation.

900.8(2) *Definitions and technical terms.* References in this subrule to sections of the Internal Revenue Code mean sections of the Internal Revenue Code of 1954 as defined (and periodically updated) in Iowa Code section 422.3(5). Technical terms such as, but not limited to, "qualified real property"; "qualified use"; "cessation of qualified use"; "disposition"; "qualified heir"; "member of the family"; "farm"; "farming purpose"; "material participation"; and "active management" are examples of technical terms which have the same meaning for Iowa special use valuation under Iowa Code chapter 450B as the terms are defined and interpreted in 26 U.S.C. Section 2032A. It is the purpose of Iowa special use valuation to conform as nearly as possible to the special use valuation provisions of 26 U.S.C. Section 2032A, as can be done within the framework of an inheritance tax instead of an estate tax.

900.8(3) *Eligibility requirements.* The eligibility requirements for valuing real estate at its special use value for computing inheritance tax are the same as the eligibility requirements of 26 U.S.C. Section 2032A for the purpose of computing the federal estate tax imposed by 26 U.S.C. Section 2001. Real estate cannot be specially valued for inheritance tax purposes unless it is also eligible and is valued at its special use value for federal estate tax purposes. However, even though real estate is specially valued for federal estate tax purposes, the estate has the right to elect or not to elect to value real estate at its special use value for computing the inheritance tax. Real estate otherwise qualified will be eligible for special use valuation for Iowa inheritance tax purposes if a valid special use valuation election has been made on the federal estate tax return. What constitutes a valid election for federal estate tax purposes is determined under applicable federal law and practice and is not determined by the department.

900.8(4) *Real estate—not eligible.*

a. Real estate otherwise qualified is not eligible to be specially valued for inheritance tax purposes if it is not includable in the federal gross estate. For example, a gift of real estate may not be part of the federal gross estate. However, the real estate may be a taxable gift, but the real estate would not qualify for special valuation.

b. Real estate, otherwise qualified, will not be eligible for the special use valuation provisions of Iowa Code chapter 450B, if the owner of a remainder, or other future property interest in the real estate, defers the payment of the inheritance tax until the termination of the prior estate. Special use valuation is made at the date of the decedent's death, while Iowa Code section 450.44 requires the future interest to be revalued at the time of the termination of the prior estate when the tax is deferred. See *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950); department subrules 900.2(8) and 900.2(9). In addition, when the tax has been deferred the life estate-remainder factor to be used in computing the tax on the future interest is the factor existing at the time of payment or the termination of the prior estate, while the additional inheritance tax under special use value is based on the life estate-remainder factor at the time of death. See *In re Estate of Millard,* 251 Iowa 1982, 105 N.W.2d 95 (1960). A second valuation after death is not within the scope of either 26 U.S.C. Section 2032A or Iowa Code chapter 450B. Since all persons with an interest in the real estate must sign the agreement specified in 900.8(5)*"e,"* the deferral of the inheritance tax on a future property interest disqualifies all of the property interests in the real estate because the future property interest is not eligible to be specially valued in case of a deferral of the tax.

900.8(5) *Election and agreement.*

a. In general. The election to specially value real estate under the provisions of Iowa Code chapter 450B must be made by the fiduciary for the estate or trust on the inheritance tax return or on a statement attached to the return. The election may be made on a delinquent return. However, once made, the election is irrevocable. The election is an affirmative act. Therefore, failure to make an election on the inheritance tax return shall be construed as an election not to specially value real estate under Iowa Code chapter 450B.

b. Form—election. The election to value real estate at its special use value shall comply with the requirements of 26 U.S.C. Section 2032A(d) and federal regulation Section 20.2032A-8. An executed

copy of the election filed as part of the federal estate tax return and accepted by the Internal Revenue Service will fulfill the requirements of this subrule.

c. Content of the election. The election must be accompanied by the agreement specified in 900.8(5)*"e"* and shall contain the information required by federal regulation Section 20.2032A-8. Submission of an executed copy of the information required by federal regulation Section 20.2032A-8(3) in support of the election to specially value property for federal estate tax purposes will fulfill the requirements of this subrule.

d. Protective elections. A protective election may be made to specially value qualified real property for inheritance tax purposes. The availability of special use valuation is contingent upon values, as finally determined for federal estate tax purposes, meeting the requirements of 26 U.S.C. Section 2032A. The protective election must be made on the inheritance tax return and shall contain substantially the same information required by federal regulation Section 20.2032A-8(b). Submission of an executed copy of the protective election filed and accepted for federal estate tax purposes will fulfill the requirements of this subrule.

If it is found that the real estate qualifies for special use valuation as finally determined for federal estate tax purposes, an additional notice of election must be filed within 60 days after the date of the determination. The notice must set forth the information required in 900.8(5)*"c"* and is to be attached, together with the agreement provided for in 900.8(5)*"e,"* to an amended final inheritance tax return. Failure to file the additional notice within the time prescribed by this subrule shall disqualify the real estate for special use valuation.

e. Agreement. An agreement must be executed by all parties who have any interest in the property to be valued at its special use value as of the date of the decedent's death. In the agreement, the qualified heirs must consent to personal liability for the additional inheritance tax imposed by Iowa Code section 450B.3 in the event of early disposition or cessation of the qualified use. All other parties with an interest in the property specially valued must consent to liability for the additional inheritance tax to the extent of the additional tax imposed on their share of the property no longer eligible to be specially valued. The liability of the qualified heir or the successor qualified heir for the additional inheritance tax is not dependent on the heir's share of the property specially valued, but rather it is for the amount of the additional inheritance tax imposed on all of the shares of the parties with an interest in the property no longer eligible for special use value.

f. Failure to file the election and agreement. Failure to file with the inheritance tax return either the election provided for in 900.8(5)*"b"* or the agreement specified in 900.8(5)*"e"* shall disqualify the property for the special use value provisions of Iowa Code chapter 450B. In the event of disqualification, the property shall be valued for inheritance tax purposes at its market value in the ordinary course of trade under the provisions of Iowa Code section 450.37.

900.8(6) *Value to use.*

a. Special use value. The special use value established and accepted by the Internal Revenue Service for the qualified real property shall also be the value of the qualified real property for the purpose of computing the inheritance tax on the shares in the specially valued property.

b. Fair market value when a recapture tax is imposed. The additional inheritance tax imposed by Iowa Code section 450B.3, due to the early disposition or cessation of the qualified use, is based on the fair market value of the qualified real property at the time of the decedent's death as reported and established in the election to value the real estate at its special use value, subject to the limitations in 900.8(6)*"c."* Iowa Code chapter 450B makes reference only to the use of federal values. Therefore, a fair market value appraisal made by the Iowa inheritance tax appraisers cannot be used in computing the amount of the additional inheritance tax imposed unless it is accepted by the Internal Revenue Service. Iowa Code section 450.37 only applies to property which is not specially valued under Iowa Code chapter 450B.

c. Fair market value limitations. The following fair market value limitations shall govern the computation of the additional inheritance tax imposed, if any. If at the time of its disposition or cessation of the qualified use, the fair market value of the property which is the subject of the additional tax is:

1. Greater than its fair market value at the time of the decedent's death, the additional tax is computed on the fair market value at death.

2. Less than its fair market value at the time of death but greater than the special use value, the additional tax is computed on the lesser fair market value.

3. Equal to or less than the special use value of the property, no additional inheritance tax is imposed. In this event, no refund is allowed. Iowa Code chapter 450B makes reference only to the imposition of additional inheritance tax, not to an additional benefit if the agreement is not fulfilled.

As a result, failure to fulfill the agreement provided for in 900.8(5)*"e"* may, in certain circumstances, result in a lower tax liability than would have been the case had the special use valuation election not been made.

The rule for computing the additional federal estate tax under 26 U.S.C. Section 2032A(c) is different. See lines 8 to 11, Additional Federal Estate Tax Form 706-A and IRS letter ruling 8215036 (1982).

900.8(7) *Imposition of additional inheritance tax.*

a. In general. If within ten years after the decedent's death there is a disposition of the property or a cessation of the qualified use within the meaning of 26 U.S.C. Section 2032A(c), an additional inheritance tax is imposed on the shares in the qualified real property specially valued, subject to the limitation in 900.8(6)*"c."* Failure to begin the special use within two years after the decedent's death disqualifies the property for the special use valuation provisions of Iowa Code chapter 450B. However, the ten-year period for imposing an additional inheritance tax is not extended by the period of time between the decedent's death and the beginning date of the special use. The rule for federal estate tax purposes is different. The ten-year period for federal estate tax purposes is extended by the period of time between the decedent's death and the time the special use begins. See 26 U.S.C. Section 2032A(c)(7)(A)(ii). In this respect, the Iowa law does not conform to the federal statute. See Iowa Code section 450B.3.

b. Additional tax on life or term estates and remainders. The additional tax on life or term estates and remainders in real estate which no longer qualifies for special use valuation is computed as if the special use valuation had not been elected. Therefore, if age or time is a determining factor in computing the additional tax, it is the age or time at the date of the decedent's death which governs the computation, not the age or time at the date of the disposition or cessation of the qualified use. Therefore, subrule 900.2(7) implementing Iowa Code section 450.44 does not apply. Iowa Code section 450B.3 makes no provision for deferral of the additional tax on a future property interest in real estate which is no longer eligible to be specially valued.

c. Interplay of the additional inheritance tax with the Iowa estate tax for deaths occurring prior to January 1, 2005. In the event of an early disposition or cessation of the qualified use of the specially valued real estate, the federal estate tax is recomputed with a corresponding recomputation of the credit allowable under 26 U.S.C. Section 2011 for state death taxes paid. If the maximum allowable credit for state death taxes paid as recomputed is greater than the total inheritance tax obligation on all of the shares of the estate, including the shares which have not been revalued, the amount of the maximum credit for state death taxes paid is the additional tax.

d. Computation of the tax—full disposition or full cessation. If there is an early disposition or a cessation of the qualified use of all of the real estate specially valued, the inheritance tax on the shares of all persons who succeed to the real estate from the decedent are recomputed based on the fair market value of the specially valued real estate. See 900.8(6)*"c"* on which market value to use. The total revalued share of each person who had an interest in the disqualified real property is the value of that person's share of the property not specially valued plus the revalued share of the special use property. The tax is then recomputed based on the applicable exemption, if any, allowable under Iowa Code section 450.9 and the rates of tax specified in Iowa Code section 450.10 in effect at the time of the decedent's death. A credit is allowed against the amount of the recomputed tax, without interest, for the tax paid which was based on the special use value.

EXAMPLES: Disposition of all of the qualified real property.

It is assumed in these examples that the real estate has qualified for special use valuation and that prior to the date of disposition, the real estate remained qualified.

EXAMPLE. Farmer A, a widower, died July 1, 1992, a resident of Iowa, and by will left all of his property to his three nephews in equal shares. Nephew B operates the farm. Nephew C lives in Des Moines, Iowa, and Nephew D lives in Phoenix, Arizona. At the time of death, Farmer A's estate consisted of:

Asset	Fair Market Value	Special Use Value
160-acre Iowa farm	$ 480,000 ($3,000 per acre)	$ 160,000 ($1,000 per acre)
Grain and livestock	90,000	90,000
Stocks, bonds and bank accounts	80,000	80,000
Gross Estate	$ 650,000	$ 330,000
Less: Deductions without federal estate tax	25,000	25,000
Net estate before federal estate tax	$ 625,000	$ 305,000

COMPUTATION OF THE INHERITANCE TAX UNDER SPECIAL USE VALUATION

Net estate before federal estate tax	$305,000
Less: Federal estate tax	4,120
Net Estate	$300,880

TAX ON SHARES

Beneficiary	Share		Tax
To each nephew	$101,666.67		$11,250.00
Total Tax Paid	$11,250 × 3	=	$33,750.00

On October 15, 1995, Nephew B, the qualified heir, retires from farming and all three nephews sell the farm to a nonrelated party for $3,200 per acre, or $512,000. Under 86.8(6)*"c,"* the $3,000 per acre valuation at death governs the computation of the additional inheritance tax.

COMPUTATION OF THE ADDITIONAL INHERITANCE TAX DUE TO THE EARLY DISPOSITION OF THE QUALIFIED USE PROPERTY

Net estate before federal estate tax		$625,000
Less: Revised federal estate tax ($9,250 was deducted for credit for state death taxes paid)		0
Net Estate		$625,000
Tax on Shares	**Share**	**Tax**
To each nephew $208,333.33	$27,250.00	
Less tax previously paid	11,250.00	
	16,000.00	
Additional tax due		
Interest at 10% from 4-03-93 to due date 4-15-96		$4,734.40
Total Due Each Nephew		$20,734.40

Total additional tax and interest for all three shares $20,734.40 × 3 = $62,203.20.

NOTE: In this example, the total additional tax for the three nephews before a credit for tax previously paid is $27,250.00 × 3 or $81,750.00. The credit for state death taxes paid on the revalued federal estate is $9,250.00. Therefore, the larger amount is the additional tax, before the credit for tax previously paid is deducted. The additional inheritance or Iowa estate tax bears interest at 10 percent beginning the last day of the ninth month after the decedent's death until the due date, which is six months after the disposition of the specially valued real estate. Interest accrues on delinquent tax at the same rate. Since interest only accrues on unpaid tax, the amount of the interest in this example would have been less if the tax had been paid prior to its due date, April 15, 1996.

e. Computation of the tax—partial disposition or cessation of the qualified use.

(1) First partial disposition or cessation of the qualified use. Compute the maximum amount of the additional tax that would be due from each person who has an interest in the portion of the real estate no longer eligible to be specially valued, as if there were an early disposition or cessation of the qualified use of all that person's specially valued real estate. The additional tax on a partial disposition or cessation of the qualified use is computed by multiplying the maximum amount of the additional tax by a fraction of which the fair market value of the portion no longer eligible is the numerator and the fair market value of all of that person's specially valued real estate is the denominator. The resulting amount is the tax due on the first partial disposition or cessation of the qualified use.

EXAMPLE 1. First partial additional tax. Assume the fair market value of three parcels of real estate owned by a single qualified heir (brother of the decedent) is $100,000 and the special use value of the three parcels is $75,000. The qualified heir is in the 10 percent tax bracket. FMV in this example means fair market value.

Parcel 1, fair market value	$25,000
Parcel 2, fair market value	50,000
Parcel 3, fair market value	25,000

Computation of Maximum Amount of Additional Tax

Tax based on fair market value ($100,000 × 10%)	$10,000
Tax based on special use value ($75,000 × 10%)	7,500
Maximum amount of additional tax	$ 2,500

Computation on the First Partial Additional Tax

Parcel 1, sale to an unrelated party

FMV of Parcel 1	$ 25,000	×	$2,500 (Maximum	= $625 (First
FMV of all special use property	$100,000		add'l tax)	add'l tax)

(2) Second or any succeeding disposition or cessation of the qualified use. Compute the maximum amount of the additional tax as outlined in the first partial disposition or cessation of the qualified use. Increase the numerator of the fraction used to determine the first additional tax by the fair market value of the second partial disposition or cessation of the qualified use. The denominator remains the same. The computed tax is then credited with the tax paid on the first partial disposition or cessation of the qualified use. Succeeding partial dispositions or cessations of the qualified use are handled in the same manner by increasing the numerator of the fraction and a corresponding increase in the credit for the prior additional tax paid.

Computation of the second and succeeding partial dispositions or cessations of the qualified use can be illustrated by the following examples:

EXAMPLE 2. Second partial additional tax. Same facts as in Example 1. In this example, Parcel 2 is sold to an unrelated party.

Computation of the Second Partial Additional Tax

FMV of Parcels 1 & 2	$ 75,000	× $2,500 (Maximum	=	$1,875
FMV of all special use property	$100,000	add'l tax)		
Less tax paid on Parcel 1				625
Second Add'l Tax				$1,250

EXAMPLE 3. Third partial additional tax. Same facts as in Example 1. In this example, Parcel 3 is sold to an unrelated party.

Computation of the Third Partial Additional Tax

FMV of Parcels 1, 2, & 3	$100,000	× $2,500 (Maximum	=	$2,500
FMV of all specially valued real estate	$100,000	add'l tax)		
Less tax paid on Parcels 1 & 2				1,875
Third Additional Tax				$ 625

f. No additional tax on shares not revalued. The shares of persons who received no interest in the real estate which is no longer eligible to be specially valued are not subject to an additional tax. Therefore, on the amended final inheritance tax return only the shares of the persons receiving interest in the real estate need to be revalued when computing the additional tax under this subrule.

EXAMPLE. Decedent A, a widower and resident of Iowa, died testate July 1, 1992, survived by nephew B and niece C. His estate consisted of two Iowa farms and certain personal property. Under A's will, the niece and nephew share equally in the personal property. Nephew B received one farm and niece C the other one. Nephew B, a qualified heir, elected to specially value his farm and niece C did not. The inheritance tax was paid on this basis. Five years after A's death, nephew B quits farming and sells his inherited farm to an unrelated party, thus incurring an additional inheritance tax. Only nephew B owes an additional tax. Niece C's share in the estate is not revalued.

900.8(8) *Return for additional inheritance tax.* The return reporting the additional inheritance or Iowa estate tax imposed due to the early disposition or cessation of the qualified use shall conform as nearly as possible to the federal additional estate tax return, Form 706A, as can be done within the framework of an inheritance tax on shares instead of an estate tax. The return must be executed by the qualified heir and filed with the Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

900.8(9) *Due date for paying the additional inheritance tax.* The additional inheritance tax imposed by Iowa Code section 450B.3 and the return for the additional tax is due six months after the early disposition or cessation of the qualified use of the real estate specially valued.

900.8(10) *No extension of time to file or pay.* Iowa Code chapter 450B makes no provision for an extension of time to file the return for the additional tax and pay the additional inheritance tax due. Therefore, if the return for the additional tax is not filed or the additional inheritance tax is not paid within six months after the early disposition or cessation of the qualified use, the return or the tax is delinquent and subject to penalty under subrule 900.8(13).

900.8(11) *Interest on additional tax.* The additional inheritance tax imposed under Iowa Code section 450B.3 accrues interest at the rate of 10 percent per annum until paid commencing the last day of the ninth month after the decedent's death. The variable prime interest rate made applicable to inheritance tax by 1981 Iowa Acts, chapter 131, sections 15 and 16, on real estate not specially valued, does not apply to interest due on the additional tax imposed by Iowa Code section 450B.3. In addition, the federal rule that interest only accrues on the additional federal estate tax when an election is made under 26 U.S.C. Section 1016(c) to increase the basis for gain or loss on the real estate no longer

eligible to be specially valued, has no application to Iowa special use valuation. In this respect the Iowa law does not conform to the federal statute.

900.8(12) *Receipt for additional tax.* The receipt for the additional tax imposed by Iowa Code section 450B.3 is separate and distinct from the receipt for inheritance tax required by Iowa Code section 450.64. The receipt must identify the property which was the subject of the early disposition or cessation of the qualified use, the owners of the property, the qualified heir, the amount paid and whether the additional tax paid is for a partial or full disposition or cessation of the qualified use.

900.8(13) *Penalty for failure to file or failure to pay.* Department rules 701—Chapter 10, pertaining to the penalty for failure to timely file the return or to pay the inheritance tax imposed by Iowa Code chapter 450, also apply where there is a failure to timely file the return reporting the additional inheritance tax or to pay the additional tax due imposed by Iowa Code section 450B.3.

900.8(14) *Duties and liabilities.*

a. Duty to report an early disposition or cessation of the qualified use. The agent designated in the agreement required by 900.8(5)*"e"* has the duty to notify the department of any early disposition or cessation of the qualified use of the property on or before the due date of the additional inheritance tax. An executed copy of the notice required by federal regulation Section 20.2032A(c)(4) will satisfy this subrule.

b. Liability for payment of the tax. The qualified heir or the heir's successor is personally liable for all the additional inheritance tax imposed under Iowa Code section 450B.3. It is the qualified heir's duty to collect the additional Iowa inheritance tax from each person whose share was revalued. In respect to the additional tax, the duty of the qualified heir is the same as the duty of the fiduciary of an estate or trust under Iowa Code section 450.5, for the regular inheritance tax. See subrule 900.2(1) regarding the responsibility of the fiduciary of an estate or trust. While the qualified heir is primarily liable for the payment of all of the additional tax, each person who has an interest in the real estate no longer eligible to be specially valued is also liable under the agreement provided for in 900.8(5)*"e"* for additional tax on that person's revalued share. Therefore, if the qualified heir fails to pay the additional tax imposed on any revalued share, the department may proceed to collect the delinquent tax from the person who received the share. The liability for the additional tax due from each person who had an interest in the revalued real estate is the same as the liability for the inheritance tax on property not specially valued. See *Eddy v. Short,* 190 Iowa 1376, 1380, 1832, 179 N.W. 818 (1920); *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906).

c. Books and records. It is the duty of the qualified heir to keep books and records necessary to substantiate the continued eligibility of the real estate for special use valuation. Upon request, the agent designated in the agreement shall furnish the department sufficient information relating to the use, ownership and status of the real estate to enable the department to determine whether there has been an early disposition or cessation of the qualified use.

900.8(15) *Special lien for additional inheritance tax.*

a. In general. The special lien created by Iowa Code section 450B.6 is separate and distinct from the lien provided for in Iowa Code section 450.7, for the inheritance tax imposed at the time of the decedent's death. The special lien is to secure any additional inheritance tax that may be due within the ten-year period after the decedent's death, should there be an early disposition or cessation of the qualified use. The inheritance tax lien provided for in Iowa Code section 450.7 is only to secure the tax imposed at the time of the decedent's death on the transfer of property including property that is specially valued. If an additional tax is imposed for the early disposition or cessation of the qualified use, it is secured by the lien created by Iowa Code section 450B.6.

b. Form of the notice of the special lien. The notice of the special lien for additional inheritance tax created by Iowa Code section 450B.6 must conform as nearly as possible to the special use valuation lien provided for in 26 U.S.C. Section 6324B.

c. Notice of lien. Unlike the lien provided for in Iowa Code section 450.7, notice of the special lien for additional inheritance tax must be recorded before it has priority over subsequent mortgagees, purchasers or judgment creditors. The special lien is perfected by recording the notice of the special lien in the recorder's office in the county where the estate is being probated (even though the real estate may

be located in a different county). Failure to perfect the special lien by recording as provided for in Iowa Code section 450B.6 divests the qualified real property from the lien in the event of a sale to a bona fide purchaser for value.

d. Duration of the special lien. The special lien continues:

(1) Until the additional inheritance tax is paid, or ten years after the date the additional tax is due, whichever first occurs, if there is an early disposition or cessation of the qualified use, or

(2) For ten years after the decedent's death on all other property which has been specially valued.

e. Release of the lien. The special lien for additional inheritance tax:

(1) May be released at any time in whole or in part upon adequate security being given to secure the additional tax that may be due, if any.

(2) Is released by payment of the additional inheritance tax imposed by Iowa Code section 450B.3, on the property which was the subject of an early disposition or cessation of the qualified use.

(3) Is released when it becomes unenforceable by reason of lapse of time.

f. Application to release the lien. Ten years after the decedent's death, unless there is an additional tax remaining unpaid, the qualified heir may submit to the department an application in writing for release of the lien on the real estate specially valued. The application must contain information necessary to enable the department to determine whether or not the special use valuation lien should be released. Supporting documentation may include a copy of the federal release. If, after audit of the application, it is determined the real estate remained eligible for special valuation, the department will release the lien.

900.8(16) *Valuation of the decedent's interest in corporations, partnerships and trusts—special rules.* If the decedent's interest in a corporation, partnership or a trust has been valued at its special use valuation under 26 U.S.C. Section 2032A for federal estate tax purposes, it is also eligible to be valued at its special use value for inheritance tax purposes, subject to the limitation imposed by statute and these rules. See Internal Revenue Service letter ruling 8108179 (1980) for guidelines in valuing the decedent's interest. Other factors indicative of value, such as the value of other assets, net dividend-paying capacity, book value, profit and loss statements and net worth must also be taken into account in arriving at the value of the decedent's interest for inheritance tax purposes. See Revenue ruling 59-60, 1959-1 C.B. 243 for the factors to be considered in valuing closely held corporate stock. In the event the decedent's interest in a corporation, partnership or trust is no longer eligible to be specially valued, the additional inheritance tax will be imposed on the fair market value of the decedent's interest in the same manner and subject to the same limitations as other property specially valued.

900.8(17) *Audits, assessments and refunds.* Subrules 900.3(1) to 900.3(3) providing for the audit, assessment and refund of the inheritance tax imposed by Iowa Code sections 450.2 and 450.3, shall also be the rules for the audit, assessment and refund of the additional inheritance tax imposed by Iowa Code section 450B.3.

900.8(18) *Appeals.* 701—Chapter 7 providing for an appeal to the director and a subsequent appeal to district court under the Iowa administrative procedure Act for disputes involving the inheritance tax imposed by Iowa Code chapter 450 shall also be the rule for appeal for disputes concerning special use valuation and the additional inheritance tax imposed by Iowa Code chapter 450B.

This rule is intended to implement Iowa Code sections 450B.1 to 450B.7.

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701—900.9(450) Market value in the ordinary course of trade. Fair market value of real or personal property is established by agreement or the appraisal and appeal procedures set forth in Iowa Code section 450.37 and subrules 900.9(1) and 900.9(2). If the value is established by agreement, the agreement may be to accept the values of such property as submitted on the Iowa inheritance tax return, to accept a negotiated value or to accept the values as finally determined for federal estate tax purposes. Values submitted on an inheritance tax return constitute an offer regarding the value of the property by the estate. An inheritance tax clearance that is issued based upon property values submitted on an inheritance tax return constitutes an acceptance of those values on that return. An agreement to accept negotiated values or accept values as finally determined for federal estate tax purposes must be an agreement between the

department of revenue, the personal representative, and the persons who have an interest in the property. If an agreement cannot be reached regarding the valuation of real property, then the department may request, within 30 days after the return is filed, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 900.9(2). Effective for estates with decedents dying on or after July 1, 2004, if an agreement cannot be reached regarding the valuation of real property, then the department may request, within 60 days after the return is filed with the department, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 900.9(2). If an appraisal is not requested within the required period, then the value listed on the return is the agreed value of the real property. If an agreement cannot be reached regarding the valuation of personal property, the personal representative or any person interested in the personal property may appeal for a revision of the department's value as set forth in Iowa Code section 450.37 and subrule 900.9(2). Any inheritance tax clearance granted by the department may be subject to revision based on federal audit adjustments. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

900.9(1) *In general.* With the exception of real estate which has been specially valued under Iowa Code chapter 450B, property included in the gross estate for inheritance tax purposes must be valued under the provisions of Iowa Code section 450.37 at its market value in the ordinary course of trade. See rule 701—900.10(450) for the rule governing the market value in the ordinary course of trade if the alternate valuation date is elected. "Market value in the ordinary course of trade" and "fair market value" are synonymous terms. *In re Estate of McGhee,* 105 Iowa 9, 74 N.W. 695 (1898). Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includable in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item whenever appropriate. See federal regulation Section 20.2031(1)(b) and Iowa Code section 441.21(1)*"b"* for similar definitions of fair market value.

a. Values not to be used. Other kinds of value assigned to property such as, but not limited to, assessed value of real estate for property tax purposes, cost price, true value, or book value are only relevant in computing the value of the property for inheritance tax purposes, to the extent they may be properly used in the determination of fair market value or special use value. *In re Estate of McGhee,* 105 Iowa 9, 74 N.W.695 (1898). Fair market value cannot be determined alone by agreement between the persons succeeding to the decedent's property. Also, fair market value cannot be determined alone by setting out in the decedent's will the price for which property can be sold. *In re Estate of Fred W. Rekers,* Probate No. 28654, Black Hawk County District Court, July 26, 1972.

b. Date of valuation. Unless the alternate valuation date is elected under Iowa Code section 450.37, or the tax has been deferred according to Iowa Code sections 450.44 to 450.49, all property includable in the gross estate must be valued at the time of the decedent's death for the purpose of computing the tax imposed by Iowa Code section 450.2. Subject to the two exceptions listed, any appreciation or depreciation of the value of an asset after the decedent's death is not to be taken into consideration. *Insel v. Wright County,* 208 Iowa 295, 225 N.W.378 (1929).

900.9(2) *Market value—how determined.*

a. In general. The fair market value of an item of property, both real and personal, that is included in the gross estate for inheritance tax purposes is expressed in the property's monetary equivalent. The process used to determine fair market value presupposes the voluntary exchange of the item in a market for its equivalent in money. *Hetland v. Bilstad,* 140 Iowa 411, 415, 118 N.W. 422 (1908). The fact the item of property is not actually sold or exchanged or even offered for sale is not relevant. It is sufficient for establishing the item's value to arrive at the specific dollar amount that a seller would voluntarily accept in exchange for the property and the amount that a buyer would be willing to pay. *Juhl v. Greene*

County Board of Review, 188 N.W.2d 351 (Iowa 1971). It is assumed when determining this specific dollar amount, which is the item's fair market value, that the seller is desirous of obtaining the highest possible price for the property and that the buyer does not wish to pay more than is absolutely necessary to acquire the property.

The item of property must be valued in a market where it is customarily traded to the public. See federal regulation 20.2031-1(b). Therefore, if an item of property is valued in a market which is not open to the general public, the party asserting the value in the restricted market has the burden to prove by a preponderance of the evidence that the value in the restricted market is the item's fair market value.

The distinction between a public and a restricted market can be illustrated by the following:

EXAMPLE 1. Under the provisions of the decedent's will, the personal representative of the estate is given the power to sell the decedent's property at either a public or private sale. Pursuant to this power, the personal representative sold the decedent's household goods at public auction held on a specific day and time which was widely advertised both in the newspaper in the locality where the decedent lived and also by sale bills posted in numerous public places in the decedent's community. The household goods sold at auction for $2,500. The fair market value of the household goods on the day of sale is $2,500. The public auction is a market where such items are commonly sold and the public had knowledge of the impending sale. The public was also invited to bid and the items to be sold were available for inspection.

EXAMPLE 2. Pursuant to an agreement between the beneficiaries of the estate, the personal representative sold the decedent's household goods and personal effects at an auction where only members of the decedent's family were permitted to bid. The items sold for $2,500, which may or may not be the fair market value of the property. Family pride, sentiment, and other personal considerations may have entered into the selling price. In this type of sale the burden is on the personal representative to prove that the selling price is the fair market value of the items sold.

b. Values established by recognized public markets.

(1) Stocks, bonds, and notes. Items of personal property such as, but not limited to, corporate stock, bonds, mutual funds, notes, and commodities which are traded on one or more of the nation's stock or commodity exchanges shall be valued under the provisions of Federal Estate Tax Regulation 20.2031-2, which regulation is incorporated in and made a part of this subrule by reference.

Individuals who have a registration of a security indicating sole ownership by one individual or multiple ownership by two or more individuals with a right of survivorship and not as tenants in common, may obtain a registration in beneficiary form as provided in the uniform transfer on death security registration Act as provided in Iowa Code section 633.800. A "registering entity" under this Act must provide notice to the department of revenue of all reregistrations made pursuant to this Act. Such notice must include the name, address, and social security number of the decedent and all transferees. Until the division of the security, after the death of all the owners, multiple beneficiaries surviving the death of all the owners hold their interest as tenants in common. If no beneficiary survives the death of all the owners, the security belongs to the estate of the deceased sole owner of the estate of the last to die of the multiple owners.

(2) Local elevator and sale barn prices. The fair market value of grain and livestock may be determined either by the quoted price from the grain elevator or sale barn in the community where the grain or livestock is located or by the price quoted from the nearest commodity exchange, less the customary delivery discount.

(3) Public auctions by the court. The fair market value of an item may be established in a public market other than a market which has a permanent location and which holds sales at periodic stated intervals. It is common for estates or the probate court to hold a public auction to sell estate property and if the sale meets certain criteria the selling price received in this type of public auction will establish the fair market value of the property. Factors in an estate or court sale which tend to establish the selling price as one at fair market value include but are not limited to the time and place of the sale were well advertised; the public was invited and encouraged to bid; members of the decedent's family or business associates were not given special consideration as to price or terms of sale; and the terms of sale were comparable to those offered at sales in a regularly established public market.

(4) Sales in a regularly established market. Sales made in a regularly established market pursuant to Iowa Code section 633.387 would qualify as a sale at fair market value for inheritance tax purposes.

c. Private sales that may establish fair market value. Private sales of estate assets may establish the fair market value of the item depending on the facts and circumstances surrounding each sale. Factors which tend to establish a private sale as one at fair market value include but are not limited to:

(1) Sales made by a recognized broker who receives a commission from the seller based on the selling price and who has exercised diligence in obtaining a buyer.

(2) Sales made by the personal representative to nonfamily members after a good-faith effort was made to solicit bids from persons who are known to be interested in buying that particular kind of property.

(3) Sales made by the attorney or the personal representative after the item of property was advertised for sale in a newspaper of general circulation or in trade publications and a good-faith effort was made to obtain the best possible price.

(4) Sales made by the personal representative when the sale price is the price quoted on one of the nation's stock or commodity exchanges.

(5) Private sales made by the personal representative to members of the decedent's family or business associates are suspect due to personal, family, or business reasons, but nevertheless may constitute a sale at fair market value, depending on the facts and circumstances surrounding each sale. The personal representative has the burden to establish that this kind of private sale is a sale at fair market value. Factors which have a bearing on whether this type of private sale is one at fair market value include, but are not limited to, the following: Did the decedent's will give a sale or price preference to a member of the decedent's family or business associate? Were the terms of sale more advantageous than terms that would be given to the general public? Was a good-faith effort made to solicit bids from other persons known to be interested in buying that particular kind of property? Was the sale made as part of a family settlement of a will contest or dispute on a claim against the estate?

d. Fair market value—no regularly established market.

(1) In general. Certain items of personal property such as, but not limited to, closely held corporate stock, real estate contracts of sale, private promissory notes, accounts receivable, partnership interests, and choses in action are not customarily bought and sold in a public market. Occasional sales of these items of personal property at infrequent intervals do not establish a market for this kind of personal property, but the lack of a regular market does not indicate that the item is of no value. When there is not a regularly established market to use as a reference point for value, it is necessary to create a hypothetical market to determine fair market value. The factors used to create a hypothetical market vary with the kind of property being valued and depend on the facts and circumstances in each individual case.

(2) Fair market value of closely held corporate stock. A closely held corporation is a corporation whose shares are owned by a relatively limited number of stockholders. Often the entire stock issue is held by members of one family or by a small group of key corporate officers. Because of the limited number of stockholders and due to a family or business relationship, little, if any, trading in the shares takes place. There is, therefore, no established market for the stock. Sales that do occur are usually at irregular intervals and seldom reflect all of the elements of a representative transaction as is contemplated by the term fair market value. The term "fair market value" has the same meaning for federal estate tax purposes as it does for Iowa inheritance tax purposes. As a result, the federal revenue rulings establishing the criteria for valuing closely held corporate stock are equally applicable to inheritance tax values. Therefore, corporate stock which meets the standards for being closely held must be valued for inheritance tax purposes under the provisions of Federal Revenue Ruling 59-60, 1959-1 C.B. 237 as modified by Revenue Ruling 65-193, 1965-2 C.B. 370 and amplified by Revenue Ruling 77-287, 1977-2 C.B. 319, Revenue Ruling 80-213, 1980-2 C.B. 101, and Revenue Ruling 83-120, 1983-2 C.B. 170, which Federal Revenue Rulings are incorporated in and made a part of this subrule by reference.

(3) Fair market value of real estate contracts, notes, and mortgages. The fair market value of promissory notes, secured or unsecured, contracts for the sale of real estate, and other obligations to pay money which are included in the gross estate is presumed to be the amount of the unpaid principal

plus the amount of interest, if any, accrued to the day of the decedent's death. If the asset is not reported on the return at face value plus accrued interest, the burden is on the party claiming a greater or lesser value to establish that face value plus accrued interest is not the asset's fair market value.

Factors which have a bearing on whether the fair market value of an asset is greater or less than face value include, but are not limited to, the rate of interest charged on the obligation; the length of time remaining on the obligation; the credit standing and payment history of the debtor; the value and nature of the property, if any, securing the obligation; the relationship of the debtor to the decedent; and whether the obligation is to be offset against the debtor's share of the estate. See Iowa Code section 633.471 and *Welp v. Department of Revenue,* 333 N.W.2d 481 (Iowa 1983). This subrule can be illustrated by the following:

EXAMPLE 1. The decedent at the time of death owned a seller's interest in an installment sale contract for the sale of a 160-acre farm. The contract contained a forfeiture provision in the event the buyer failed to make the payments and further provided that the purchase price was to be paid in 20 equal annual principal payments plus interest at 7 percent per year on the unpaid principal balance. At the time of the decedent's death, the contract of sale had ten years yet to run and the current federal land bank interest rate for farm land loans was 12 percent. Assuming in this example that other valuation factors are not relevant, the fair market value of the contract is the face amount of the contract, plus interest, discounted to reflect a 12 percent interest return on the outstanding principal balance. A prudent investor would not invest at a lower rate of interest when a comparable investment with equal security would earn 12 percent interest.

EXAMPLE 2. A tenant of the decedent owed the decedent $5,000, which was evidenced by a promissory note, payable on demand, drawing 6 percent interest, and which was executed in 1992, a year prior to the decedent's death. Assuming no other valuation factors are relevant, the fair market value of the $5,000 promissory note is its face value, plus accrued interest. The less than market interest rate on the note does not affect its fair market value because the note is due on demand and, as a consequence, there is no loss of a higher rate of interest which would be the case if the note specified a future payment date.

EXAMPLE 3. Decedent A died intestate July 1, 1993, survived by two nephews, B and C. The estate consisted, after debts and charges, of $300,000 in cash and U.S. Government bonds and a noninterest bearing promissory note for $10,000 executed by nephew B in 1975 for money borrowed for his college education. No payments were ever made on the note. The note is outlawed by the statute of limitations and would be worthless if anyone other than nephew B or C had executed the note. However, since nephew B inherits one-half of A's estate, and is required under the law of setoff and retainer to pay the note before he can participate in the estate, the fair market value of the note in this particular fact situation is $10,000 because it is collectible in full. Each nephew's share of the estate is $155,000. Nephew C receives $155,000 in cash and nephew B receives $145,000 in cash plus his canceled note for $10,000. In this example, the statutory right of setoff and retainer supersedes other factors which are relevant in determining the fair market value of the asset. See Iowa Code section 633.471; *In re Estate of Farris,* 234 Iowa 960, 14 N.W.2d 889 (1944); *Indiana Department of Revenue v. Estate of Cohen,* 436 N.E.2d 832 (Ind. App. 1982); *Gearhart's Ex'r and Ex'x v. Howard,* 302 Ky. 709, 196 S.W.2d 113 (1946).

(4) Fair market value of a sole proprietorship or partnership interest. The fair market value of the decedent's interest in a business, whether a partnership or a proprietorship, is the net amount a willing buyer would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts. Relevant factors in determining net value include but are not limited to the following: a fair appraisal as of the applicable valuation date of all of the assets of the business, tangible and intangible, including goodwill; the demonstrated earning capacity of the business; and the other factors in rule 701—700.8(422), to the extent they are applicable, that must be considered in valuing closely held corporate stock.

(5) Fair market value of choses in action. The fair market value of the decedent's interest in a right to sue for a debt or a sum of money often cannot be determined with certainty at the time of the decedent's death. The value of this right is dependent on many factors which include, but are not limited to, the following: the strength and credibility of the decedent's evidence; the statutory and case

law supporting the decedent's claim or position; the ability of the opposing party to pay a judgment; the extent, if applicable, of the decedent's contributory negligence; and the other normal hazards of litigation. However, this lack of certainty does not mean the right to sue has no value at the time of the decedent's death. Evidence of what was actually received for this right by the decedent's estate or its beneficiary is evidence of the fair market value of the right at death.

This subrule can be illustrated by the following example:

The decedent died in a fire of uncertain origin that destroyed his dwelling. Due to the circumstances surrounding the fire, the estate's right of recovery from the fire insurance carrier was speculative and, therefore, the value of this right at death was unknown. After the estate was closed, the beneficiary of the estate settled the fire insurance claim for $15,000. The amount received in settlement of the claim can be considered as evidence of the fair market value of the right of action at death. *Bair v. Randall,* 258 N.W.2d 333 (Iowa 1977). In addition, interest on the unpaid tax begins and continues to accrue from the date of the decedent's death.

(6) Wrongful death proceeds are not included in the gross estate. *Estate of Dieleman v. Department of Rev.,* 222 N.W.2d 459 (Iowa 1974).

e. By agreement between the department, the estate and its beneficiaries. Iowa Code section 450.37 provides that the market value in the ordinary course of trade is to be determined by agreement between the estate and its beneficiaries and the department. The term "agreement" when used with reference to the value of an asset, whether it is real or personal property, has the same meaning as the term is used in the law of contracts. The agreement between the department, the estate and its beneficiaries may be contained in a single written instrument, or it may be made by an offer submitted by the estate and its beneficiaries and its acceptance by the department. The agreement establishing values for computing the tax may specify that the values as finally determined for federal estate tax purposes on all or a portion of the assets will be the values used in computing the tax.

(1) Offer by the estate and the beneficiaries. It is the duty of the taxpayer to list on the inheritance tax return the values of the assets in the gross estate which the estate and those beneficially entitled to the decedent's property are willing to offer as the values for computing the taxable shares in the estate. The value of the assets listed on the return will constitute an offer for the department to accept or reject. Counteroffers may be made in the event an offer is rejected. This rule applies equally to real and personal property.

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or
2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or
3. The department does not request an appraisal within 60 days after the return has been filed in the case of the value of real estate. Notice of appraisal must be served by certified mail, and the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery. However, see 900.9(2)*"e"*(3) for the rule governing values listed as "unknown" or "undetermined." See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

(3) Values listed on the return as "undetermined" or "unknown." If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as "unknown" or "undetermined." The return must contain a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until 60 days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See *Bair v. Randall,* 258 N.W.2d 333 (Iowa

1977), regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent's death.

f. Values established—no agreement.

(1) Real estate. If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under 86.9(2)*"e,"* the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. For the purposes of appraisal, "real estate or real property" means the land and appurtenances, including structures affixed thereto. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, is not controlling in determining values for inheritance tax purposes. Appraisals of real estate must be made in fee simple including land, all appurtenances and structures affixed to the real estate. Discounts in the value of real estate are not to be considered in the valuation of real property for the purposes of an appraisal. Such discounts in valuation are to be resolved by mutual agreement through informal procedures between the personal representative of the estate and the department. If an agreement between the personal representative of the estate and the department cannot be obtained, then the valuation placed on the property by the department may be appealed by the personal representative of the estate pursuant to the procedures set forth in 701—Chapter 7. If either the department or the estate does not agree with the results of an appraisal that is conducted pursuant to Iowa Code sections 450.27 through 450.36, either the department or the estate may file an objection to the appraisal pursuant to Iowa Code section 450.31. Information on additional factors to assist in the determination of fair market value of real property can be found in 701—subrule 86.9(2).

(2) Personal property. Effective for estates of decedents dying on or after July 1, 1983. If an agreement is not reached on the value of personal property under 900.9(2)*"e,"* the estate or any person beneficially receiving the personal property may appeal to the director under Iowa Code section 450.94, subsection 3, for a resolution of the valuation dispute, with the right of judicial review of the director's decision under Iowa Code chapter 17A.

g. Amending returns to change values.

(1) Amendment permitted or required. Unless value has been established by the appraisal or administrative proceedings, the inheritance tax return may be amended by the estate to change the value of an asset listed on the return as long as the amendment is filed before an agreement is made between the estate and the department as to the asset's value. The return must be amended to list the value of an asset omitted from the original return or to assign a value for an item listed on the original return as "unknown" or "undetermined."

If the facts and circumstances surrounding the value agreement would justify a reformation or rescission of the agreement under the law of contracts, the return may be amended by the estate, and must be amended at the department's request, to change the value of the item to its correct fair market value or its special use value as the case may be.

(2) Amendment not permitted. A return cannot be amended:

1. To change the agreed value of an asset, if the facts and circumstances surrounding the agreement would not justify a reformation or rescission of the agreement,

2. To change a real estate value that has been established by the appraisal proceedings under Iowa Code sections 450.31 to 450.33, *Insel v. Wright County,* 208 Iowa 295, 225 N.W. 378 (1929), or

3. To change the value of an item of personal property that has been established by the department's administrative procedure under 701—Chapter 7, or, if an appeal is taken from the director's decision, by judicial review under Iowa Code chapter 17A. Provided, in no event may the return be amended to lower the value of an asset that would result in a refund of tax more than three

years after the tax became due or one year after the tax was paid, whichever time is the later. Iowa Code section 450.94, *Welp v. Department of Revenue,* 333 N.W.2d 481 (Iowa 1983).

This rule is intended to implement Iowa Code sections 450.27 to 450.37, 450.44 to 450.49, and 633.800 to 633.811.

[**ARC 1137C**, IAB 10/30/13, effective 12/4/13; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23; **ARC 7192C**, IAB 12/13/23, effective 1/17/24]

701—900.10(450) Alternate valuation date.

900.10(1) *When available.* The alternate valuation date allowed by 26 U.S.C. Section 2032 is available for estates of decedents dying on or after July 1, 1983, on the same terms and conditions which govern the alternate valuation date for federal estate tax purposes. Effective for estates of decedents dying after July 18, 1984, the alternate valuation date cannot be elected unless the value of the gross estate for federal estate tax purposes is reduced and the amount of federal estate tax owing, after all credits have been deducted, has also been reduced. See 26 U.S.C. Section 2032(c) enacted by Public Law 98-369 Section 1023(a). In general, the alternate valuation date is six months after the date of the decedent's death. If property is sold within the six-month period, the date of sale is the alternate date for valuing the property sold. See federal regulation Section 20.2032-1, as amended December 28, 1972, for the rules governing the valuation of property in the gross estate at its alternate valuation date for federal estate tax purposes. If the election is made, all of the property included in the gross estate and not just a portion of the property, must be valued at the alternate valuation date. The estate may elect both the alternate valuation date and the special use value under Iowa Code chapter 450B, if the estate is otherwise qualified. See Federal Revenue Ruling 83-31(1983). It is a precondition for valuing the property at its alternate value for Iowa inheritance tax purposes that the property has been valued at the alternate value for federal estate tax purposes. However, even if the property in the gross estate is valued at the alternate valuation date for federal estate tax purposes, the estate has the option either to elect or not to elect the alternate valuation date for Iowa inheritance tax purposes. If the alternate valuation date is elected, the value established for federal estate tax purposes shall also be the alternate value for inheritance tax purposes. The election is an affirmative act and for estates of decedents dying prior to July 19, 1984, it must be made on a timely filed inheritance tax return, taking into consideration any extensions of time granted to file the return. Effective for estates of decedents dying after July 18, 1984, the election may be made on the first return filed for the estate, regardless of whether the return is delinquent, providing the return is filed no more than one year after the due date, taking into consideration any extensions of time granted to file the return and pay the tax due. See 26 U.S.C. 2032(d) as amended by Public Law 98-369 Section 1024(a). Failure to indicate on the inheritance tax return whether the alternate valuation date is elected shall be construed as a decision not to elect the alternate valuation date.

900.10(2) *When not available.*

a. The alternate valuation date provided for in 26 U.S.C. Section 2032 cannot be elected by the estate if the tax on a future property interest has been deferred under Iowa Code sections 450.44 to 450.49. The tax on a future property interest must be computed on the fair market value of the future property interest at the time the tax is paid. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W. 2d 469 (1950).

b. Real estate which is subject to an additional inheritance tax imposed by Iowa Code section 450B.3 due to the early disposition or cessation of the qualified use cannot be valued at the alternate valuation date for purposes of the recapture tax, unless the alternate valuation date was originally elected on the return for the decedent's estate.

c. The alternate valuation date cannot be elected if the size of the gross estate for federal estate tax purposes, based on the fair market value of the assets at the time of death, is less than the minimum filing requirements under current federal authority. The fact that the gross estate for inheritance tax purposes is less than the minimum federal estate tax filing requirement is not relevant.

This rule is intended to implement Iowa Code sections 422.3 and 450.37.

[Editorial change: IAC Supplement 11/2/22]

701—900.11(450) Valuation—special problem areas.

900.11(1) *Valuation of life estate and remainder interests—in general.* Life or term estates and remainders in property cannot be valued separately for inheritance tax purposes without reference to the value of the property in which the life or term estate and remainder exists. The first valuation step is to determine the value of the property as a whole. This rule applies equally to fair market value in the ordinary course of trade, whether it be valued at death or on the alternate valuation date six months after death, or at its special use value under Iowa Code chapter 450B. The second step is to apply the life estate-remainder or term tables in rule 701—900.7(450) to the whole value of the property in which the life estate-remainder or term exists. Iowa Code section 450.51 requires that value of annuities, life or term, deferred or future estates in property be computed on the basis that the use of the property is worth a return of 4 percent per year. The life estate-remainder tables in rule 701—900.7(450) make no distinction between the life expectancy of males and females. See *City of Los Angeles v. Manhart,* 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed. 657 (1978) and *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris,* 51 U.S. Law Week 5243, 77 L.Ed.2d 1238 (1983) for the requirement that retirement annuities must not discriminate on the basis of sex. However, the actual life expectancy of the particular person receiving the life estate is not relevant in determining the value of the life estate for inheritance tax purposes. *In re Estate of Evans,* 255 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.2d 62.

900.11(2) *Single life estate and remainder.* The value of a single life estate and remainder in property is computed by first determining the value of the property as a whole. The life estate is then computed by multiplying the value of the property as a whole by the life estate factor in rule 701—900.7(450) for the age of the life tenant. The value of property remaining after the value of the life estate is subtracted is the value of the remainder interest in the property.

The computation of the value of a single life estate and remainder in property is illustrated by the following:

EXAMPLE: Decedent A, by will, devised to surviving spouse B, aged 68, a life estate in a 160-acre farm, with the remainder at B's death to niece C. Special use value and the alternate value were not elected. The 160-acre farm at the time of the decedent's death had a fair market value of $2,000 per acre, or $320,000.

COMPUTATION OF B's LIFE ESTATE: The life estate factor for a life tenant aged 68 under 701—900.7(450) is .43306; that is, the use of the $320,000 for life at the statutory rate of return of 4 percent is worth 43.306 percent of the value of the farm. Niece C's remainder factor is.56694. The life estate-remainder factors when combined equal 100 percent of the value of the property. It is the age of the life tenant which governs the value of the remainder. The age of the person receiving the remainder is not relevant.

Value of B's Life Estate	$320,000 × .43306 =	$138,579.20
Value of C's Remainder	$320,000 × .56694 =	$181,420.80
Total Value		$320,000.00

900.11(3) *Joint and succeeding life estates.* If property includable in the gross estate is subject to succeeding or joint life estates, the following general rules shall govern their valuation:

a. There can be no greater value assigned to all of the life estate interests than the value of the life estate of the youngest life tenant. The value of the life estate of the youngest life tenant fixes the value of the remainder interest in the property.

b. If two or more persons share in a life estate, the life tenants are presumed to share equally in the life estate during the life of the older life tenant, unless the will or trust instrument specifically directs that the income or use may be allocated otherwise.

c. The age of a life tenant alone determines the value of that life tenant's interest in the property. The life tenant's state of health is not relevant to valuation. *In re Estate of Evans,* 225 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.62. As a result, if a succeeding life tenant

is older than the preceding life tenant, the value of the succeeding life estate is zero. These general rules can be illustrated by the following examples:

EXAMPLE 1. Decedent A, by will, devised a 160-acre farm to surviving spouse B, aged 68, for life, and upon B's death, to daughter C, aged 45, for life, and the remainder upon C's death to nephews D and E in equal shares. The 160-acre farm had a fair market value at A's death of $320,000. Neither the alternate valuation date nor special use value was elected.

COMPUTATION OF THE SUCCEEDING LIFE ESTATES AND REMAINDER

1.	Value of B's Life Estate:		
	Life estate factor for age 68 is .43306		
	$320,000 × .43306 =		$138,579.20
2.	Value of C's Succeeding Life Estate		
	Life estate factor for age 45 is .71463		
	$320,000 × .71463 =	$228,681.60	
	Less: B's life estate	$138,579.20	
	Value of C's life estate		$ 90,102.40
3.	Value of D's ½ remainder		
	Remainder factor for a life tenant aged 45 is .28537		
	as ½ of $320,000 × .28537 =		$ 91,318.40
4.	Value of E's ½ remainder		
	½ of $320,000 × .28537		$ 91,318.40
Total Value — life estates and remainders			$320,000.00

NOTE: In this example, the value of C's succeeding life estate is reduced by the value of B's preceding life estate because C does not have the use of the farm during B's lifetime. The value of the remainder to D and E is fixed by the age of C, the succeeding life tenant.

EXAMPLE 2: Joint and survivorship life estates and remainder. In this example, the estate elected both the alternate valuation date and special use value. This is permitted by Federal Revenue Ruling 83-31 (1983) if the gross estate and the real estate are otherwise qualified.

Decedent A, a widow, by will devised her 240-acre Iowa farm to her nephew, B, aged 52, and the nephew's wife, C, aged 48, for their joint lives and for the life of the survivor, with the remainder to D and E in equal shares. The farm had a fair market value at death of $2,200 per acre, or $528,000; the alternate value of the farm six months after death was $2,100 per acre, or $504,000. Its special use value is $1,000 per acre or $240,000. The life estates and the remainder are computed on the basis of the special use value of $240,000.

COMPUTATION OF JOINT LIFE ESTATE — REMAINDER VALUES

1.	B's share of joint life estate.		
	$240,000 × .64086 (life estate factor, age 52) =	$153,806.40	
	½ as B's share =		$ 76,903.20
2.	C's share of joint life estate.		
	$240,000 × .68468 (life estate factor, age 48) =	$164,323.20	
	Less: ½ value of life estate for B's life	$ 76,903.20	$ 87,420.00

3. Value of the remainder.

The value of the remainder is computed by using the remainder factor at the age of the youngest life tenant. In this example, it is .31532, based on C's age of 48.

D's share of the remainder.	
½ $240,000 × .31532 =	$ 37,838.40
E's share of the remainder.	
Same as D's	$ 37,838.40
Total value of joint life estates and the remainder	$240,000.00

NOTE: In this example, B and C share equally in the life use of the farm during the life of B, who is the eldest. As a result, each life tenant's share during B's life is worth $76,903.20. Since C is younger than B, the difference between the value of the life estates for B and C is set off to C alone. The age of the youngest life tenant (C in this example) fixes the value of the remainder interest in the farm.

900.11(4) *Fixed sum annuity for life or for a term of years.* The value of an annuity for a fixed sum of money, either for the life of the annuitant or for a specific period of time, shall be computed by determining the present value of the future annuity payments using the 4 percent annuity tables in rule 701—900.7(450). A fixed sum annuity, either for life or for a term of years, is to be distinguished from a life estate and remainder in property. A life estate in property is the use of property, and the present value of the life use cannot exceed the value of the property in which the life estate-remainder exists, regardless of the rate of return used to determine the life estate factor. A fixed sum annuity on the other hand is different. The amount of the annuity does not necessarily bear any relationship to the earning capacity or value of the property which funds the annuity. The fixed sum annuity may be for an amount larger than the 4 percent used to compute a life estate. As a result, the present value of the fixed sum annuity, computed at the statutory rate of 4 percent per year, may exceed the value of the property which funds the fixed annuity. In this case, the present value of the future annuity payments cannot exceed the value of the property which funds the annuity. The remainder in this situation has no value for inheritance tax purposes.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A devises a 240-acre farm to daughter B, with the provision that B pay the sum $5,000 per year to C for life. The farm is subject to a lien as security for the payment of the annuity. C, the annuitant, is 54 years old. The fair market value of the farm at A's death is $2,000 per acre, or $480,000. Neither special use value nor the alternate valuation date was elected.

COMPUTATION OF THE VALUE OF THE $5,000 ANNUITY AND THE REMAINDER REVERSION TO B. Under rule 701—900.7(450), the 4 percent annuity factor for life at age 54 is 15.436 for each dollar of the annuity received. Therefore, C's life annuity is computed as follows:

C's Annuity		
$5,000 × 15.436 =		$ 77,180
B's Reversionary — Remainder Interest		
Value of farm	$480,000	
Less: C's annuity	$ 77,180	$402,820
Total annuity and reversion — Remainder		$480,000

NOTE: In this example, the $5,000 annuity is worth less than a life estate in the farm. A life estate would be worth $273,499.20 because the use of $480,000 at 4 percent per year would return $19,200 per year, which is much greater than the $5,000 annuity.

EXAMPLE 2: Decedent A, by will, directed that the sum of $100,000 be set aside from the residuary estate to be held in trust to pay $500 per month to B for life, and upon B's death, the remaining principal

and income, if any, are to be paid to C and D in equal shares. B, the annuitant, was 35 years old at the time of A's death.

Under rule 701—900.7(450), the annuity factor for a person 35 years of age is 19.946 for each dollar of the annuity. The annuity factor is multiplied by the annual amount of the annuity, which in this case is $6,000 per year.

COMPUTATION OF THE PRESENT VALUE OF B's $6,000 ANNUITY

$500.00 × 12 = $6,000 × 19.946 = $119,676, which exceeds the value of the property funding the annuity. As a result, the value for inheritance tax purposes is $100,000, the maximum amount allowed by subrule 900.11(4). The remainder to C and D has no value for inheritance tax purposes.

900.11(5) *Valuation of remainder interests.* Iowa Code section 450.51 and rule 701—900.7(450) require the value of a remainder interest in property to be computed by subtracting the present value of the preceding life or term estate from the total value of the property in which the remainder exists. Since age or time is the controlling factor in valuing life or term estates in property, the time when the preceding life or term estate is valued is crucial for determining the value of the remainder interests in the property. Iowa Code sections 450.6, 450.44 and 450.52 provide three alternative dates for valuing a remainder, or other property interest in future possession or enjoyment, for inheritance tax purposes. Each of the three dates requires valuing the preceding life or term estate on the date selected, thus in effect, valuing the remainder interest at the same time. The value of the remainder interest is based on the value of the property on the date elected for payment. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950). The remainder or term factor in rule 701—900.7(450) which is based on the age of the life tenant, or the number of years remaining in the term on the date of payment, is then applied to the value of the property to determine the value of the remainder interest. *In re Estate of Millard,* 251 Iowa 1282, 105 N.W.2d 95 (1960). Therefore, the remainder, or other future property interest, shall be valued by the following general rules.

a. If the tax on a remainder or other future property interest is paid within 9 months after the decedent's death (12 months for estates of decedents dying prior to July 1, 1981), the tax is to be based on the value of the property at the time of the decedent's death (whether it is fair market value or special use value) or the alternate value, 6 months after death, if elected. The age of the life tenant at the time of the decedent's death (the youngest life tenant in case of succeeding or joint life estates), or the term of years specified in the will or trust instrument, must be used to determine the value of the life estate or term estate in computing the tax on the remainder or other future property interests.

b. If the tax is paid after nine months from the date of the decedent's death (one year for estates of decedents dying prior to July 1, 1981), but before the termination of the previous life or term estate, the tax on the remainder or other future property interest shall be computed on the fair market value of the property at the time of payment using the life estate or term factor based on the life tenant's age or term of years remaining at the time the tax is paid. Neither the alternate value nor special use value can be used to value the property after nine months from the date of the decedent's death.

c. If the tax on the remainder or other future property interest is not paid under paragraphs *"a"* and *"b,"* the tax must be paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate. In this case, the tax is based on the fair market value of the property and the life estate remainder or term factor corresponding with the time the prior estate is terminated. If the prior estate is terminated due to the death of the life tenant, or due to the expiration of the term of years, the remainder factor is 100 percent of the value of the property. If the prior estate terminates during the life of the life tenant or during the term of years, the tax is computed in the same manner as provided in paragraph *"b."* If the tax is not paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate, the tax owing is delinquent and is subject to penalty and interest as provided by law. For information regarding interest rate, see 701—Chapter 10. However, in this case the value of the remainder interest is not modified to reflect any change in the fair market value of the property or the life or term estate factor that may occur due to the lapse of time between the due date of the tax and the date the tax is paid.

d. Iowa Code section 450.52 provides that the tax may be paid at any time on the present worth of the future property interest. The term "present worth" means the value of the future property interest at

the time the tax is paid. Therefore, if the tax on the remainder or other future property interest is not paid within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981), the estate or the beneficiary receiving the future interest cannot pay the tax on a delinquent basis using a value and a life estate or term factor which does not reflect the present worth of the future interest at the time of payment. In this situation, the tax must be computed under paragraph *"b"* or *"c"* of this subrule, whichever applies. In this respect, failure to pay the tax within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981) operates as a deferral of the tax on the future property interest. *In re Estate of Dwight E. Clapp,* Probate No. 7251, Clay County Iowa District Court, July 2, 1980.

e. If an alternative valuation date is chosen, a liability must be currently owed by the estate to be deductible.

f. Tax rates in effect at the date of the decedent's death are the rates applicable for computation of the tax owed. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950).

These rules can be illustrated by the following examples:

For an example of computing remainder interests, see Examples 1 and 2 in subrule 900.11(3).

EXAMPLE 1: Decedent A died July 1, 2009, and, by will, devised all of her personal property to her surviving spouse, B, and her 240-acre Iowa farm to B for his life with the remainder at B's death to two nephews, C and D, in equal shares. The surviving spouse, B, was 74 years of age when A died. The fair market value of the 240-acre farm was $2,000 per acre, or $480,000 on the date of A's death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, 2010, the tax on B's life estate was paid. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, 2011, due to adverse economic circumstances, B, C, and D voluntarily sold the 240-acre farm at public auction to an unrelated person for $2,100 per acre, or $504,000. B's life estate was not preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under paragraph 900.11(5)*"b"* when the life estate is terminated before the life tenant's death. The sale price of the farm and the life estate remainder factor reflecting B's age on October 15, 2011, (B's age is now 76) control the value of the remainder.

COMPUTATION OF THE REMAINDER INTEREST OF C AND D

The remainder factor in rule 701—900.7(450) for a life tenant aged 76 is.68249.

C's ½ remainder interest	½ ($504,000 × .68249) =	$171,987.48
D's ½ remainder interest	same as C's	171,987.48
Total value of remainder		$343,974.96

NOTE: In this example, the value of C's and D's remainder interest in the sale proceeds is greater than the value of the remainder at the time of A's death due to the increase in the remainder factor because of B's increased age and the increase in the fair market value of the farm. However, if B's life estate had been preserved in the sale proceeds, the tax could continue to be deferred on C's and D's remainder interest. C and D cannot be required to pay the tax on their remainder until they come into possession or enjoyment of the property.

EXAMPLE 2: Decedent A at the time of her death on July 1, 2005, owned a vested remainder in a 240-acre Iowa farm, which was subject to the life use of her mother, B, who was 87 years old when A died. A's ownership of the remainder interest was not discovered until after life tenant B's death on October 15, 2007. The fair market value of the farm was $2,000 per acre or $480,000 on July 1, 2005, and $2,200 per acre or $528,000 on October 15, 2007. Neither the alternate valuation date nor special use valuation can be used in this fact situation. See rule 701—900.10(450) and paragraph 900.8(4)*"c."* A's estate was reopened to include the omitted remainder in the 240-acre farm. An amended inheritance tax return was filed December 10, 2007, basing the tax on the fair market value and the remainder factor corresponding with the life tenant's age (87) on July 1, 2005. In this fact situation, the tax on A's remainder is not computed correctly, even if A's estate has offered to pay a penalty and interest on the tax due. The tax must be computed on the basis of a fair market value of $2,200 per acre and a remainder

factor of 100 percent of the value of the farm. No penalty or interest would be assessed if the correct tax is paid prior to July 15, 2008, which is nine months after the life tenant's death. The life tenant's age at death is not relevant.

900.11(6) *Valuation of contingent property interests.* Contingent remainders, succeeding life estates and other contingent property interests must be valued as if no contingency exists. Factors to be considered to determine if a contingency interest exists include, but are not limited to, the interest is generally a future interest, it is not a vested interest, and vesting of the interest depends upon the occurrence of a specific event or condition being met. As a result, subrule 900.11(5) applies equally to the valuation of vested and contingent property interests. The tax on a contingent property interest may be deferred until such time as it can be determined who will come into possession or enjoyment of the property. By deferring the tax under Iowa Code sections 450.44 to 450.49, a person does not have to speculate as to who will be the probable owner of the contingent interest. As a result, no one is required to pay tax on a property interest to which a vested right has not been received. Therefore, if a person exercises the right to pay the tax during the period of the contingency, that person cannot obtain a tax advantage by asserting that the value should be reduced due to a contingency, when the person would not be entitled to a reduction in value if the tax had been deferred until the ownership is determined.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240-acre Iowa farm to B for life and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example, C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to Example 1 in subrule 900.11(3) with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E, who own the remainder, will come into possession or enjoyment of the 240-acre farm. No tax will be owing on the succeeding life estate because C receives nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

For another example of computing a contingent remainder interest see *In re Estate of Schnepp,* 258 Iowa 33, 138 N.W.2d 886 (1965).

900.11(7) *Valuation of growing crops owned by the decedent.* Valuation of growing crops owned by the decedent is determined by using a proration formula. Based on the formula, the cash value of the actual crop realized in the fall of the year is prorated by attributing a portion of the value to the period before death and a portion after death. The portion attributed to the period before death is the value for Iowa inheritance tax purposes. The numerator of the ratio expresses the number of days the decedent lived during the growing season. In Iowa, the growing season for corn and beans is generally considered to be from May 15 through October 15, or 153 days. This 153-day period is the denominator of the ratio. This ratio should then be multiplied by the number of bushels realized in the fall, and then multiplied by the local elevator price at the time of maturity. However, if the estate sells the crop within a reasonable time after harvest, and the sale is an "arm's-length transaction," then the sale price of the crop can be used as a fair market value basis.

EXAMPLE: The decedent grew crops consisting of corn and beans. The decedent died August 15. The decedent lived 92 days of the growing season. In the fall of the year, 2,000 bushels of corn were harvested by the estate and sold to the local elevator for $3.10 per bushel. The value of the crop for the purpose of Iowa inheritance tax purposes is calculated as follows:

$$\frac{92}{153} \times \begin{matrix}2{,}000\\ \text{bushels}\end{matrix} \times \begin{matrix}\$3.10 \text{ per}\\ \text{bushel}\end{matrix} = \$3{,}728.10$$

900.11(8) *Valuation of cash rent farm leases.* If the decedent at the time of death owns farm property that was subject to lease, or if the decedent rents such property, the value of the cash rent farm for inheritance tax purposes must be determined. The formula to be used is the total cash rent for the entire rental period prorated over the entire year. The proration percentage is the number of days the decedent

lived during the rental period, divided by 365 days. This percentage shall then be applied to the total cash rent for the entire year. Deductions from the resulting sum are allowed for rent payments made prior to the death of the decedent. If the deduction results in a negative amount, no refund or credit is allowed.

This valuation formula is to be utilized whether the decedent is the lessor or lessee of such property.

EXAMPLES: The decedent has a cash rent farm lease agreement (beginning March 1 through the end of February of the next year) with farmer X for automatic yearly rentals. The rent is due in two installments: $10,000 on March 1 and $10,000 on September 1.

1. Decedent dies February 1, 2011. $20,000 × 338/365 = $18,520.55. Farmer X had paid his two installments in 2010. His next installment is due March 1, 2011, for the new farm rental year. Farmer X has overpaid by $1,479.45 ($18,520.55 – $20,000 = -$1,479.45). No refund or credit is allowed.

2. Decedent dies April 20, 2011. $20,000 × 51/365 = $2,794.52. Farmer X has paid his March 1 installment of $10,000. Farmer X has overpaid by $7,205.48 ($2,794.52 – $10,000 = -$7,205.48). No refund or credit is allowed.

3. Decedent dies October 10, 2011. $20,000 × 224/365 = $12,273.97. Farmer X paid his March installment but has not paid his September installment. Farmer X has underpaid at the date of death. $12,273.97 – $10,000 = $2,273.97. This amount must be reported as an asset. It is an accounts receivable due at date of decedent's death.

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

[**ARC 1137C**, IAB 10/30/13, effective 12/4/13; Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

701—900.12(450) The inheritance tax clearance.

900.12(1) *In general.* The inheritance tax clearance is a written certificate of the department documenting the satisfaction of the inheritance tax obligation of the persons succeeding to the property included in the gross estate and the personal representative of the estate, and also the obligation of the qualified heir, in case special use valuation is elected under Iowa Code chapter 450B. The clearance is either in the form of a full payment tax receipt or a statement that no tax is due on the shares of the estate. Even though the department of revenue has issued an inheritance tax clearance, the tax may be subject to change as a result of any federal estate tax changes affecting the Iowa inheritance tax. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

900.12(2) *Limitations on the clearance.* Limitations on the inheritance clearance include, but are not limited to:

a. If special use valuation has been elected under Iowa Code chapter 450B, a clearance certifying all inheritance tax has been paid in full, or that no inheritance tax is due, does not extend to any additional inheritance tax that may be imposed under Iowa Code section 450B.3 by reason of the early disposition or early cessation of the qualified use of the real estate specially valued. Provided, this limitation shall be null and void if:

(1) The real estate specially valued remains in qualified use for the ten-year period after the decedent's death, or

(2) There is an early disposition or early cessation of the qualified use and any additional inheritance tax imposed by Iowa Code section 450B.3 is paid in full.

b. The clearance does not extend to property that is not reported on the return.

c. The clearance does not extend to a fraudulently filed return or a return which misrepresents a material fact.

d. The clearance does not release an underlying tax obligation that remains unpaid, even though a clearance may release the liens imposed by Iowa Code sections 450.7 and 450B.6.

900.12(3) *The tax paid in full clearance.* Effective for estates of decedents dying on or after July 1, 1983, the distinction between full payment and partial payment clearances is abolished. For estates

of decedents dying on or after July 1, 1983, in which a tax is due, only full payment clearances will be issued. The full payment clearance will be issued only after all the tax, penalty and interest have been paid in full. Provided, if the tax has been paid in full on some, but not all of the shares in the estate, the department will, upon request, issue a full payment clearance limited to those shares on which the tax has been paid in full. The inheritance tax is a separate tax on each share of the estate and not one tax on the estate itself. *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906). However, see paragraph 900.12(2)*"a"* for the limitation on clearances if the estate elected the special use valuation under Iowa Code chapter 450B.

900.12(4) *The no tax due clearance.* If no tax is found to be due on any of the shares of the estate, the department will issue a clearance certifying that no tax is due, subject to the limitations in subrule 900.12(2).

900.12(5) *Clearance releases the lien.*

a. In general. Two inheritance tax liens have been created by statute to secure the payment of an inheritance tax. The lien created by Iowa Code section 450.7 secures the payment of the tax imposed by Iowa Code section 450.3, regardless of whether the tax is based on market value in the ordinary course of trade, the alternate value or special use value. Iowa Code section 450B.6 creates a second lien to secure the additional inheritance tax that may be due by reason of the early disposition or early cessation of the qualified use of special use valuation property.

b. The section 450.7 lien. Effective May 20, 1999, a ten-year statutory lien for inheritance tax on all estates is imposed regardless of whether the decedent died prior to or subsequent to July 1, 1995. A lien is imposed for the inheritance tax on all the property of the estate or owned by the decedent for a period of ten years from the date of death of the decedent, unless a remainder or deferred interest is at issue, then the statutory period for the lien may be extended beyond the ten-year limitation to accommodate the term of the interest. For exceptions and additional information, see Iowa Code section 450.7. A tax clearance releases the lien imposed by Iowa Code section 450.7 on all of the property in the gross estate that is reported on the return.

Effective for estates of decedents dying on or after July 1, 1984, if a tax, or additional tax, is found to be due after the issuance of an inheritance tax clearance, the lien under Iowa Code section 450.7 does not have priority against subsequent mortgages, purchases or judgment creditors, unless the department gives notice of the lien by recording the notice in the office of the recorder of the county where the estate is probated, or in the county where the property is located, if the estate has not been administered. As a result, if the department has issued an inheritance tax clearance, an examiner of real estate or personal property titles can rely on this clearance as a release of the inheritance tax lien even though additional tax may be due. This subrule only pertains to the security for the tax under the lien provisions of Iowa Code section 450.7. Other provisions for security for payment of the tax such as judgment liens, mortgages, bonds and distress warrants, are not affected by this subrule. See Iowa Code section 450B.6 and subrule 900.8(15) for the lien for additional tax on property which has been valued at its special use value.

This subrule can be illustrated by the following example:

EXAMPLE: Decedent A died August 15, 1994, a resident of Iowa. By will A devised a 160-acre farm to nephew B and all personal property to niece C. The net estate consisted of the farm with a fair market value of $2,000 per acre, or $320,000 and personal property worth $320,000. On May 24, 1995, the inheritance tax return was filed and tax of $88,000 ($44,000 for each beneficiary) was paid. The department issued its unqualified inheritance tax clearance on June 13, 1995. On July 5, 1995, C pledges some corporate stock inherited from A as security for a bank loan. On August 1, 1995, additional personal property was discovered worth $10,000 ($10,000 × 15% = $1,500) and an amended inheritance tax return was filed without remittance. On August 15, 1995, the department filed an inheritance tax lien for the $1,500 additional tax plus interest (no penalty was imposed because 90 percent of the tax was timely paid).

In this example, the bank's lien on the pledged corporate stock is superior to the inheritance tax lien under Iowa Code section 450.7, because at the time the stock was pledged (July 5, 1995), the department had not filed its lien for the additional tax owing. Since only C owed additional tax, B's share of the estate was not subject to the lien filed August 15, 1995.

c. The section 450B.6 lien. This lien has no application to estates of decedents dying prior to July 1, 1982. In estates of decedents dying on or after July 1, 1982, the lien only applies to the property which has been specially valued under Iowa Code chapter 450B. A clearance certifying full payment of the additional inheritance tax imposed by Iowa Code section 450B.3 releases the lien on the property which was subject to the additional tax. Since the lien imposed by Iowa Code section 450B.6 expires automatically ten years after the decedent's death on property remaining in qualified use during the ten-year period, a tax clearance is not required.

900.12(6) *Distribution of the clearance.* Effective for estates of decedents dying on or after July 1, 1983, only an original inheritance tax clearance will be issued by the department. The personal representative is required to designate on the return who is to receive the clearance. If the return fails to designate a recipient, the clearance will be sent to the clerk of the district court.
[Editorial change: IAC Supplement 11/2/22; Editorial change: IAC Supplement 10/18/23]

Rules 701—900.9(450) to 701—900.12(450) are intended to implement Iowa Code chapter 17A and sections 450.1 as amended by 1999 Iowa Acts, chapter 152, section 32, 450.7 as amended by 1999 Iowa Acts, chapter 151, section 45, 450.27 as amended by 1999 Iowa Acts, chapter 152, section 33, and Iowa Code sections 450.5, 450.58, 450.64, 450B.2, 450B.3, 450B.6, 633.477, and 633.479.

701—900.13(450) No lien on the surviving spouse's share of the estate. Effective for estates of decedents dying on or after January 1, 1988, no inheritance tax lien is imposed on the share of the decedent's estate passing to the surviving spouse. In addition, effective for estates of decedents dying on or after July 1, 1997, no inheritance tax lien is imposed on the share of the decedent's estate passing to the decedent's parents, grandparents, great-grandparents, and other lineal ascendants, children (including legally adopted children and biological children entitled to inherit under the laws of this state), grandchildren, great-grandchildren, and other lineal descendants and stepchildren.

This rule is intended to implement Iowa Code sections 450.7(1) and 450.12 as amended by 1997 Iowa Acts, Senate File 35.
[Editorial change: IAC Supplement 11/2/22]

701—900.14(450) Computation of shares. The following areas of the law should be applied when computing the shares of an estate for the purpose of Iowa inheritance tax:

900.14(1) *Right to take against the will.* In the event that a decedent dies with a will, a surviving spouse may elect to take against the will and receive a statutory share in real and personal property of the decedent as designated by statute. If a surviving spouse elects to take against the will, this election nullifies gifts to the surviving spouse set forth in the decedent's will. For details regarding this election and statutory share, see Iowa Code sections 633.236 to 633.259 and *In the Matter of Campbell,* 319 N.W.2d 275, 277 (Iowa 1982).

900.14(2) *Family settlements.* Beneficiaries of an estate may contract to divide real or personal property of the estate, or both, in a manner contrary to the will of the decedent. The court of competent jurisdiction may approve the settlement contract of the beneficiaries. However, the department is not a party to the contract and is not bound to compute the shares of the estate based on the settlement contract. Instead, the department must compute the shares of the estate based upon the terms of the decedent's will, unless a court of competent jurisdiction determines that the will should be set aside. See *In re Estate of Bliven,* 236 N.W.2d 366 (Iowa 1975).

900.14(3) *Order of abatement.* Shares to be received by the beneficiaries of an estate are subject to abatement for the payment of debts, charges, federal and state estate taxes in the order as provided in Iowa Code section 633.436.

900.14(4) *Contrary order of abatement.* An order of abatement contrary to that provided in Iowa Code section 633.436 is provided by statute. For instance, if a provision of a will, trust or other testamentary instrument explicitly directs an order of abatement contrary to Iowa Code section 633.436 or a court of competent jurisdiction determines order of abatement due to a devise that would result in an order of abatement contrary to Iowa Code section 633.436, then the order of abatement indicated is to be followed. For additional information regarding contrary provisions of abatement, see Iowa Code

section 633.437. For details regarding marital share and contrary order of abatement see, *Estate of Lois C. Olin*, Docket No. 92-70-1-0437, Letter of Findings (June 1993).

900.14(5) *"Stepped-up" basis.* If a decedent's will provides that taxes are to be paid from the residue of the estate and not the respective beneficial shares, a "stepped-up" basis will be utilized when computing the shares which will result in the appropriate beneficiaries' shares to include the tax obligation that was paid as an additional inheritance. A "stepped-up" basis is based on gifts prior to the residual share; shares paid out of the residue are not stepped-up.

EXAMPLE: Decedent's will gives $1,000 to a nephew and directs that the inheritance tax on this bequest be paid from the residue of the estate. The stepped-up share is computed as follows:

Tax: $1,000 × 10% = $100. Divide the tax by the difference between the tax rate and 100 percent (90 percent in this example): $100 divided by 90% = $111.11. Add the stepped-up tax of $111.11 to the original bequest of $1,000. This results in a stepped-up share of $1,111.11, which allows the nephew to keep $1,000 after the tax is paid.

900.14(6) *Antilapse provision and the exception to the antilapse statute.* Iowa Code sections 633.273 and 633.274 set forth guidance on the allocation of property in situations in which a lapse in inheritance may occur. Iowa Code section 633.273 provides that when a devisee predeceases a testator, the issue of the devisee inherits the property, per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary. However, Iowa Code section 633.274 is an exception to Iowa Code section 633.273. If the spouse of the testator predeceases the testator, the inheritance shall lapse, unless the terms of the will clearly and explicitly provide to the contrary. For details regarding the provisions, please see the cited statutes.

900.14(7) *Disclaimer.* A person who is to succeed to real or personal property may refuse to take the property by executing a binding disclaimer which relates back to the date of transfer. Unless the transferor of the property has otherwise provided, disclaimed property passes as if the disclaimant has predeceased the transferor. To be valid, a disclaimer must be in writing and state the property, interest or right being disclaimed, the extent the property, right, or interest is being disclaimed, and be signed and acknowledged by the disclaimant. The disclaimer must be received by the transferor or the transferor's fiduciary not later than nine months after the later of the date in which the property, interest or right being disclaimed was transferred or the date the disclaimant reaches 18 years of age. A disclaimer is irrevocable from the date of its receipt by the transferor or the transferor's fiduciary. For additional details regarding disclaimers, please see Iowa Code Supplement chapter 633E.

Effective for estates with decedents dying on or after July 1, 2004, disclaimers are to be filed in compliance with the Iowa uniform disclaimer Act, Iowa Code Supplement chapter 633E. This Act sets forth new requirements for valid disclaimers. Criteria will be based on the type of property or the interest being disclaimed. General criteria for disclaimers have not changed. To be valid, a disclaimer must be in writing or be stored in electronic record or other medium that is retrievable, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be filed. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest in property of the estate.

A disclaimer becomes irrevocable when it is delivered, filed, or when it becomes effective, whichever occurs later. Delivery of a disclaimer may generally be made by personal delivery, first-class mail, or any other method likely to result in its receipt. However, specific interests being disclaimed require specific means of delivery. For explicit information regarding delivery of a disclaimer based on interest being disclaimed, see Iowa Code Supplement section 633E.12.

900.14(8) *Right of retainer.* If a distributee of an estate is indebted to the estate, whether the decedent dies testate or intestate, the personal representative has the right to offset the distributee's share in the estate against the amount owed to the estate by the distributee. For additional information regarding this right of offset and retainer, see Iowa Code section 633.471.

900.14(9) *Deferred life estates and remainder interest.*

a. A deferred estate generally occurs as the result of a decedent granting a life estate in property to one person with the remainder of the property to another. In such cases, the determination of the tax on the remainder interest to be received by the remainderman may be deferred until the determination of

the previous life estate pursuant to Iowa Code section 450.46. Tax on a remainder interest that has been deferred is valued pursuant to Iowa Code section 450.37, with no reduction based on the previous life estate. Tax due on a deferred interest must be paid before the last day of the ninth month from the date of the death of the life tenant pursuant to Iowa Code section 450.46. Penalties and interest are not imposed if the tax is paid before the last day of the ninth month from the date of the death of the life tenant. If the death of the decedent occurred before July 1, 1981, the tax due on a deferred interest must be paid before the last day of the twelfth month from the date of the death of the life tenant. Deferment may be elected due to the fact that the remainder interest is contingent and because the value of the remainder interest may be significantly altered from the time of the decedent's death until the death of the life tenant. A request for deferment may be made on a completed department form, and the completed form, with any required documentation, may be filed with the department on or before the due date of the inheritance tax return. Failure to file a completed department form requesting a deferral of tax on the remainder interest with the inheritance tax return will allow the department to provide an automatic deferral for qualifying remainder interests.

b. If deferral is chosen, an inheritance tax clearance cannot be issued for the estate. Expenses cannot be used to offset the value of the deferred remainder interest. Based upon Iowa Code section 450.12, deductible expenses must be expenses paid by the estate. Expenses incurred by a deferred remainder interest would not qualify based on Iowa Code section 450.12 as deductible expenses. Pursuant to Iowa Code section 450.52, the owner of a deferred remainder interest may choose to pay the tax on the present value of the remainder interest and have the lien on such an interest removed prior to the termination of the previous life estate. If early termination of the deferred remainder interest occurs, the value of the remainder interest will be reduced by the value of remaining previous life estate.

c. If the tax on an estate is deferred, a bond may have to be filed with the proper clerk of the district court. This bond must remain effective until the tax on the deferred estate is paid. Failure to maintain or properly renew the bond will result in the bond's being declared forfeited, and the amount collected. For additional details regarding obtaining a bond, see Iowa Code sections 450.49 and 450.50. The estate may secure payment of the deferred tax by providing other security in lieu of a bond, including but not limited to securities named in Iowa Code section 450.48(2) and securities deemed satisfactory by the department.

900.14(10) *Credit on prior transfers.* A credit is allowed for inheritance tax paid by certain beneficiaries that have received shares from a prior estate. The credit can be claimed only by the brother, sister, son-in-law and daughter-in-law of the decedent. The decedent in whose estate the credit is to be used must have died within two years of the death of the decedent in whose estate the tax for which the credit is requested was paid and the property inherited. The credit is subject to two limitations:

a. The maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate. In other words, the inheritance tax the present decedent paid on the property in the prior estate must be prorated on the basis such property bears to the total property inherited in the prior estate; and

b. The amount of the credit cannot exceed the tax generated in the current estate on the property which was inherited from the prior estate. This means that the tax in the current estate must be apportioned on the basis the prior estate property bears to the total property inherited by the beneficiary in the second estate. The credit cannot exceed this apportioned amount.

EXAMPLE 1: *Limitation—maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate.*

First decedent, Sister, has two siblings. Her property passes to two brothers (A and B). Her property includes:

Real estate	$400,000
Cash, etc.	$250,000
Expenses	$150,000

Each brother inherits $250,000. The tax due from each brother is $21,375.

Brother B dies one year and two months after Sister. He leaves everything to Brother A.

Brother B's property includes:

½ interest in Sister's real estate (current value)	$225,000
Full interest in his own real estate	$500,000
½ interest in Sister's cash, etc.	$ 50,000
Full interest in his own cash, etc.	$500,000
Expenses	$200,000

Brother A inherits $1,075,000 with a current tax due of $103,875. Reduce the current tax due, $103,875, by the amount of tax paid in the prior estate, $21,375. The result is $82,500.

Percentage of Brother A's tax of $103,875 generated by Sister's property included in Brother B's estate:

$275,000/$1,075,000 = 25.58%

$103,875 × 25.58% = $26,571.23

Maximum credit cannot be more than the tax paid in the prior estate, $21,375. The tax due in this estate is $82,500.

EXAMPLE 2: *Limitation—amount of credit cannot exceed the tax generated in the current estate on the property which was inherited from the prior estate.*

First decedent, Sister, has two siblings. Her property passes to two brothers (A and B). Her property includes:

Real estate	$400,000
Cash, etc.	$250,000
Expenses	$150,000

Each brother inherits $250,000. The tax due from each brother is $21,375.

Brother B dies one year and two months after Sister. He leaves everything to Brother A.

Brother B's property includes:

½ interest in Sister's real estate (current value)	$225,000
Full interest in his own real estate	$500,000
½ interest in Sister's cash, etc.	$ 50,000
Full interest in his own cash, etc.	$500,000
Expenses	$200,000

Brother A inherits $1,075,000 with a current tax due of $103,875. Reduce the amount of the current tax due, $103,875, by the tax paid in the prior estate, $21,375. The result is $82,500.

$1,075,000 less prior estate properties worth $275,000 equals $800,000. Tax would equal $76,375.

The greater of the two computations ($82,500 v. $76,375) is the tax due in the estate. $82,500 would be due.

EXAMPLE 3: *Two-year requirement.* Same facts as above, except that Brother B dies two years and two months after the date of death of Sister. Tax is $103,875 with no reduction since it is over the two-year limitation.

EXAMPLE 4: *Multiple beneficiary issues.* Same facts as above, except that beneficiaries of Brother B have changed. If there are multiple beneficiaries in the second estate, only the beneficiaries that are brother, sister, son-in-law, or daughter-in-law relationships to the prior decedent can utilize the credit. The credit is then determined by the property value passing in this estate that can be identified as being inherited by this decedent from a prior estate.

Brother B dies one year and two months after his Sister. He leaves his real estate to Brother A and the residual assets to his two nieces.

Brother B's share of prior decedent's (Sister's) estate equals $725,000. Tax equals $68,875. Reduce the current tax due, $68,875, by the tax paid in the prior estate, $21,375. The result is $47,500.

Niece 1's share equals $175,000. Tax equals $22,250.
Niece 2's share equals $175,000. Tax equals $22,250.
Total tax for Brother B's estate with no reductions equals $113,375.
Total tax with Brother B's reduced tax is $92,000.

Computation without the prior decedent's (Sister's) property that passes to a qualified heir:

Brother B's share would be $500,000. Tax equals $46,375.
Niece 1's share remains the same since she is not a qualified heir. Tax equals $22,250.
Niece 2's share remains the same since she is not a qualified heir. Tax equals $22,250.
Total tax for this computation is $90,875.

The greater of the two computations is $92,000. $92,000 would be due.

900.14(11) *Prorated cash bequests.* If the distribution of an estate includes pecuniary legacies with an estate with property located in and outside Iowa, or the estate includes specific bequests from a fund containing property located in and outside Iowa, then the Iowa inheritance tax liability for those legacies or bequests will be based on the pro rata portion of the property of the estate located in Iowa. For further details see *Estate of Dennis M. Billingsley,* Iowa District Court of Emmet County, Case No. 13394 (July 15, 1982).

This rule is intended to implement Iowa Code chapters 450 and 633E.

[**ARC 1137C**, IAB 10/30/13, effective 12/4/13; **ARC 4310C**, IAB 2/13/19, effective 3/20/19; Editorial change: IAC Supplement 11/2/22]

701—900.15(450) Applicability. Any references made within Chapter 900 of these rules to Chapter 901 of these rules, "Iowa Estate Tax," are applicable only for deaths that occurred prior to January 1, 2005.

This rule is intended to implement 2014 Iowa Acts, House File 2435, section 25.

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◊ Two or more ARCs