

## CHAPTER 92

### STREAMLINED SALES AND USE TAX ADMINISTRATION

#### S.F. 515

AN ACT relating to the administration of the streamlined sales tax agreement by the department of revenue.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 423.1, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. “Advertising and promotional direct mail” means direct mail the primary purpose of which is to attract public attention to a product, person, business, or organization or in an attempt to sell, popularize, or secure financial support for a product, person, business, or organization. For purposes of this subsection, “product” may include tangible personal property, a service, or an item transferred electronically.

NEW SUBSECTION. 33A. “Other direct mail” means all direct mail that is not advertising and promotional direct mail even if advertising and promotional direct mail is included in the same mailing. For purposes of this subsection, other direct mail includes but is not limited to:

a. Transactional direct mail that contains personal information specific to the addressee including but not limited to invoices, bills, statements of account, and payroll advices.

b. A legally required mailing including but not limited to privacy notices, tax reports, and stockholder reports.

c. Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including but not limited to newsletters and pieces of informational literature.

Sec. 2. Section 423.1, subsection 14, Code 2011, is amended to read as follows:

14. a. “Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material.

b. “Direct mail” does not include include:

(1) multiple Multiple items of printed material delivered to a single address.

(2) The development of billing information or the provision of a data processing service that is more than incidental.

Sec. 3. Section 423.1, subsection 19, Code 2011, is amended to read as follows:

19. “First use of a service”. A “first use of a service” occurs, for the purposes of this chapter, ~~when a service is rendered, furnished, or performed in Iowa or if rendered, furnished, or performed outside of Iowa, when the product or result of the service is used in Iowa at the location at which the service is received.~~ For purposes of this subsection, the location at which the service is received is the location at which the purchaser or the purchaser’s donee can first make use of the result of the service. For purposes of this subsection, the location at which the seller performs the service is not determinative of the location at which the service is received.

Sec. 4. Section 423.1, subsection 52, Code 2011, is amended to read as follows:

52. “Services” means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer who pays the wages of an employee for a valuable consideration by any person engaged in any business or occupation specifically enumerated in section 423.2. The tax shall be due and collectible when first use of the service is rendered, furnished, or performed for received by the ultimate user of the service.

Sec. 5. Section 423.2, subsection 9, Code 2011, is amended to read as follows:

9. A tax of six percent is imposed upon the sales price from any mobile telecommunications service ~~which, including all paging services, that this state is allowed to tax by pursuant to~~ the provisions of the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 116 et seq. For purposes of this subsection, taxes on mobile telecommunications service, as defined under the federal Mobile Telecommunications Sourcing Act that are deemed to be provided by the customer's home service provider, shall be paid to the taxing jurisdiction whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications service originates, terminates, or passes through and shall in all other respects be taxed in conformity with the federal Mobile Telecommunications Sourcing Act. All other provisions of the federal Mobile Telecommunications Sourcing Act are adopted by the state of Iowa and incorporated into this subsection by reference. With respect to mobile telecommunications service under the federal Mobile Telecommunications Sourcing Act, the director shall, if requested, enter into agreements consistent with the provisions of the federal Act.

Sec. 6. Section 423.3, subsection 60, paragraph b, unnumbered paragraph 1, Code 2011, is amended to read as follows:

*"Durable medical equipment"* means equipment, including repair and replacement parts, and all components or attachments, but does not include mobility enhancing equipment, to which all of the following apply:

Sec. 7. Section 423.5, subsection 5, Code 2011, is amended to read as follows:

5. The use in this state of services enumerated in section 423.2. This tax is applicable where ~~services are furnished in this state or where the product or result of the service is first used~~ in this state.

Sec. 8. Section 423.15, unnumbered paragraph 1, Code 2011, is amended to read as follows:

~~All sellers obligated to collect Iowa sales or use tax shall use the standards set out in this section to determine where sales of products occur, excluding sales enumerated in section 423.16. These provisions apply regardless of the characterization of a product as tangible personal property, a digital good, or a service, excluding telecommunications services. All sales of products, except those sales enumerated in section 423.16, shall be sourced according to this section by sellers obligated to collect Iowa sales and use tax. The sourcing rules described in this section apply to sales of tangible personal property, digital goods, and all services other than telecommunications services. This section only applies to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's sale of a product. This section does not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions in which the use occurs. A seller's obligation to collect Iowa sales tax or Iowa use tax only occurs if the sale is sourced to this state. The application of whether Whether Iowa sales tax applies to sales a sale sourced to Iowa depends upon where shall be determined based on the location at which the sale is consummated by delivery or, in the case of a service, where the first use of the service occurs.~~

Sec. 9. Section 423.19, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

**423.19 Direct mail sourcing.**

1. Notwithstanding section 423.15, the following provisions apply to sales of advertising and promotional direct mail:

a. A purchaser of advertising and promotional direct mail may provide the seller with one of the following:

(1) A direct pay permit.

(2) An agreement certificate of exemption claiming to be direct mail, or a similar written statement, if the statement is approved, authorized, or accepted by the department.

(3) Information showing the jurisdiction to which the advertising and promotional direct mail is to be delivered to the recipient.

b. (1) If the purchaser provides the seller a permit, a certificate of exemption, or an approved written statement pursuant to paragraph "a", subparagraph (1) or (2), then, in the absence of bad faith, the seller is relieved of the obligation to collect, pay, or remit tax on a transaction involving advertising and promotional direct mail to which the permit, certificate, or approved written statement applies. In such a transaction, the purchaser shall source the sale to the jurisdiction in which the advertising and promotional direct mail is to be delivered to the recipient and shall report and pay any tax due accordingly.

(2) If the purchaser provides the seller information showing the jurisdiction to which the advertising and promotional direct mail is to be delivered pursuant to paragraph "a", subparagraph (3), the seller shall source the sale to the jurisdiction in which the advertising and promotional direct mail is to be delivered and shall collect and remit the tax due accordingly. If the seller has sourced the sale according to the delivery information provided by the purchaser, then, in the absence of bad faith, the seller is relieved of any further obligation to collect tax on the sale of the advertising and promotional direct mail.

c. (1) If the purchaser fails to provide the seller with one of the items listed in paragraph "a", the sale shall be sourced pursuant to the sourcing directive described in section 423.15, subsection 1, paragraph "e".

(2) If a sale is sourced to this state pursuant to subparagraph (1), the full amount of the tax imposed by subchapter II or III, as applicable, is due from the purchaser, notwithstanding section 423.22.

2. Notwithstanding section 423.15, sales of other direct mail are subject to all of the following:

a. Except as otherwise provided in this subsection, the sale of other direct mail shall be sourced pursuant to the sourcing directive described in section 423.15, subsection 1, paragraph "c".

b. A purchaser of other direct mail may provide the seller with either of the following:

(1) A direct pay permit.

(2) An agreement certificate of exemption claiming to be direct mail, or a similar written statement, if the statement is approved, authorized, or accepted by the department.

c. (1) If the purchaser provides the seller a permit, a certificate of exemption, or an approved written statement pursuant to paragraph "b", then, in the absence of bad faith, the seller is relieved of the obligation to collect, pay, or remit tax on a transaction involving other direct mail to which the permit, certificate, or approved written statement applies.

(2) Notwithstanding paragraph "a", the sale of other direct mail under the circumstances described in subparagraph (1) shall be sourced to the jurisdiction in which the other direct mail is to be delivered to the recipient, and the purchaser shall report and pay any tax due accordingly.

Sec. 10. Section 423.50, subsection 4, Code 2011, is amended to read as follows:

4. If a due date falls on a Saturday, a Sunday, legal holiday, or a legal banking holiday in this state, the ~~taxes are~~ payment, including any related payment voucher information, is due on the next succeeding business day.

Sec. 11. Section 423.50, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. If the federal reserve bank is closed on the due date preventing a person from being able to make an automated payment, the payment shall be accepted as timely if made on the next day the federal reserve bank is open.

Approved April 27, 2011