

SALES AND USE TAXES

Footnotes

Refunds to governmental bodies, § 423.4

Multistate discussions to consider simplification and uniformity of sales and use tax administration; 2002 Acts, ch 1161, §4, 5
Former ch 423 repealed and new provisions governing sales and use tax enacted effective July 1, 2004; see 2003 Acts, 1st Ex, ch 2, §94151, 205
Sales and use tax industrial processing exemption study; annual reports through January 1, 2013; 2005 Acts, ch 77, §1, 2

423.1 Definitions.

As used in this chapter the following words, terms, and phrases have the meanings ascribed to them by this section, except where the context clearly indicates that a different meaning is intended:

1. "*Agent*" means a person appointed by a seller to represent the seller before the member states.
2. "*Agreement*" means the streamlined sales and use tax agreement authorized by subchapter IV of this chapter to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use taxes.
3. "*Agricultural production*" includes the production of flowering, ornamental, or vegetable plants in commercial greenhouses or otherwise, and production from aquaculture. "*Agricultural products*" includes flowering, ornamental, or vegetable plants and those products of aquaculture.
4. "*Business*" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.
5. "*Certificate of title*" means a certificate of title issued for a vehicle or for manufactured housing under chapter 321.
6. "*Certified automated system*" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.
7. "*Certified service provider*" means an agent certified under the agreement to perform all of a seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases.
8. "*Computer*" means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.
9. "*Computer software*" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
10. "*Delivered electronically*" means delivered to the purchaser by means other than tangible storage media.
11. "*Delivery charges*" means charges assessed by a seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing charges.

12. *"Department"* means the department of revenue.

13. *"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. *"Direct mail"* does not include multiple items of printed material delivered to a single address.

14. *"Director"* means the director of revenue.

15. *"Electronic"* means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

16. *"Farm deer"* means the same as defined in section 170.1.

17. *"Farm machinery and equipment"* means machinery and equipment used in agricultural production.

18. *"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.

19. *"Goods, wares, or merchandise"* means the same as tangible personal property.

20. *"Governing board"* means the group comprised of representatives of the member states of the agreement which is created by the agreement to be responsible for the agreement's administration and operation.

21. *"Installed purchase price"* is the amount charged, valued in money whether paid in money or otherwise, by a building contractor to convert manufactured housing from tangible personal property into realty. *"Installed purchase price"* includes, but is not limited to, amounts charged for installing a foundation and electrical and plumbing hookups. *"Installed purchase price"* excludes any amount charged for landscaping in connection with the conversion.

22. *"Lease or rental"*.

a. *"Lease or rental"* means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A *"lease or rental"* may include future options to purchase or extend.

b. *"Lease or rental"* includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1).

c. *"Lease or rental"* does not include any of the following:

(1) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(2) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of any option price does not exceed the greater of one hundred dollars or one percent of the total required payments.

(3) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A

condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

d. This definition shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles; the Internal Revenue Code; the uniform commercial code, chapter 554; or other provisions of federal, state, or local law.

23. *"Livestock"* includes but is not limited to an animal classified as an ostrich, rhea, emu, bison, or farm deer.

24. *"Manufactured housing"* means *"manufactured home"* as defined in section 321.1.

25. *"Member state"* is any state which has signed the agreement.

26. *"Mobile home"* means *"manufactured or mobile home"* as defined in section 321.1.

27. *"Model 1 seller"* is a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

28. *"Model 2 seller"* is a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

29. *"Model 3 seller"* is a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a *"seller"* includes an affiliated group of sellers using the same proprietary system.

30. *"Nonresidential commercial operations"* means industrial, commercial, mining, or agricultural operations, whether for profit or not, but does not include apartment complexes or mobile home parks.

31. *"Not registered under the agreement"* means lack of registration by a seller with the member states under the central registration system referenced in section 423.11, subsection 4.

32. *"Person"* means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

33. *"Place of business"* means any warehouse, store, place, office, building, or structure where goods, wares, or merchandise are offered for sale at retail or where any taxable amusement is conducted, or each office where gas, water, heat, communication, or electric services are offered for sale at retail.

When a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building, or place where the books, papers, and records of the taxpayer are kept shall be deemed to be the taxpayer's place of business.

34. *"Prewritten computer software"* includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. The combining of two or more prewritten computer software programs or prewritten portions of prewritten programs does not cause the combination to be other than prewritten computer software. *"Prewritten computer software"* also means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion of the prewritten software that is modified or enhanced to any degree, when such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, when there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

35. "*Property purchased for resale in connection with the performance of a service*" means property which is purchased for resale in connection with the rendition, furnishing, or performance of a service by a person who renders, furnishes, or performs the service if all of the following occur:

- a. The provider and user of the service intend that a sale of the property will occur.
- b. The property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value.
- c. The sale is evidenced by a separate charge for the identifiable piece of property.

36. "*Purchase*" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

37. "*Purchase price*" means the same as "*sales price*" as defined in this section.

38. "*Purchaser*" is a person to whom a sale of personal property is made or to whom a service is furnished.

39. "*Receive*" and "*receipt*" mean any of the following:

- a. Taking possession of tangible personal property.
- b. Making first use of a service.
- c. Taking possession or making first use of digital goods, whichever comes first.

"*Receive*" and "*receipt*" do not include possession by a shipping company on behalf of a purchaser.

40. "*Registered under the agreement*" means registration by a seller under the central registration system referenced in section 423.11, subsection 4.

41. "*Relief agency*" means the state, any county, city and county, city, or district thereof, or any agency engaged in actual relief work.

42. "*Retailer*" means and includes every person engaged in the business of selling tangible personal property or taxable services at retail, or the furnishing of gas, electricity, water, or communication service, and tickets or admissions to places of amusement and athletic events or operating amusement devices or other forms of commercial amusement from which revenues are derived. However, when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this chapter. "*Retailer*" includes a seller obligated to collect sales or use tax.

43. *"Retailer maintaining a place of business in this state"* or any like term includes any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to chapter 490.

44. *"Retailers who are not model sellers"* means all retailers other than model 1, model 2, or model 3 sellers.

45. *"Retail sale"* or *"sale at retail"* means any sale, lease, or rental for any purpose other than resale, sublease, or subrent.

46. *"Sales"* or *"sale"* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration.

47. *"Sales price"* applies to the measure subject to sales tax.

a. *"Sales price"* means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

(1) The seller's cost of the property sold.

(2) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller.

(3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges.

(4) Delivery charges.

(5) Installation charges.

(6) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(7) Credit for any trade-in authorized by section 423.3, subsection 59.

b. *"Sales price"* does not include:

(1) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale.

(2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(4) Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributor's, or wholesaler's product or to promote the sale or recognition of the

manufacturer's, distributor's, or wholesaler's product. This subparagraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

c. The sales price does not include and the sales tax shall not apply to amounts received for charges included in paragraph "a", subparagraphs (3) through (7), if they are separately contracted for, separately stated on the invoice, billing, or similar document given to the purchaser, and the amounts represent charges which are not the sales price of a taxable sale or of the furnishing of a taxable service.

d. For purposes of this definition, the sales price from a rental or lease includes rent, royalties, and copyright and license fees.

48. "*Sales tax*" means the tax levied under subchapter II of this chapter.

49. "*Seller*" means any person making sales, leases, or rentals of personal property or services.

50. "*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 the service is rendered, furnished, or performed for the ultimate user of the service.

51. "*Services used in the processing of tangible personal property*" includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale.

52. "*State*" means any state of the United States and the District of Columbia.

53. "*System*" means the central electronic registration system maintained by Iowa and other states which are signatories to the agreement.

54. "*Tangible personal property*" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "*Tangible personal property*" includes electricity, water, gas, steam, and prewritten computer software.

55. "*Taxpayer*" includes any person who is subject to a tax imposed by this chapter, whether acting on the person's own behalf or as a fiduciary.

56. "*Trailer*" shall mean every trailer, as is now or may be hereafter so defined by chapter 321, which is required to be registered or is subject only to the issuance of a certificate of title under chapter 321.

57. "*Use*" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. A retailer's or building contractor's sale of manufactured housing for use in this state, whether in the form of tangible personal property or of realty, is a use of that property for the purposes of this chapter.

58. "*Use tax*" means the tax levied under subchapter III of this chapter for which the retailer collects and remits tax to the department.

59. "*User*" means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

60. "*Value of services*" means the price to the user exclusive of any direct tax imposed by the federal government or by this chapter.

61. "*Vehicles subject to registration*" means any vehicle subject to registration pursuant to section 321.18.

2003 Acts, 1st Ex, ch 2, § 94, 205; 2004 Acts, ch 1073, § 22, 23; 2005 Acts, ch 140, §3, 4, 42

Former § 423.1 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.2 Tax imposed.

1. There is imposed a tax of five percent upon the sales price of all sales of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users except as otherwise provided in this subchapter.

a. For the purposes of this subchapter, sales of the following services are treated as if they were sales of tangible personal property:

(1) Sales of engraving, photography, retouching, printing, and binding services.

(2) Sales of vulcanizing, recapping, and retreading services.

(3) Sales of prepaid telephone calling cards and prepaid authorization numbers.

(4) Sales of optional service or warranty contracts, except residential service contracts regulated under chapter 523C, which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under this section. The sales price is subject to tax even if some of the services furnished are not enumerated under this section. Additional sales, services, or use taxes shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this subsection.

If the optional service or warranty contract is a computer software maintenance or support service contract and there is no separately stated fee for the taxable personal property or for the nontaxable service, the tax imposed by this subsection shall be imposed on fifty percent of the sales price from the sale of such contract. If the contract provides for technical support services only, no tax shall be imposed under this subsection. The provisions of this subparagraph (4) also apply to the use tax.

b. Sales of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders for the erection of buildings or the alteration, repair, or improvement of real property are retail sales of tangible personal property in whatever quantity sold. Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail. The tax shall not be due when materials are withdrawn from inventory for use in construction outside of Iowa and the tax shall not apply to tangible personal property purchased and consumed by the manufacturer as building materials in the performance by the manufacturer or its subcontractor of construction outside of Iowa. The sale of carpeting is not a sale of building materials. The sale of carpeting to owners, contractors, subcontractors, or builders shall be treated as the sale of ordinary tangible personal property and subject to the tax imposed under this subsection and the use tax.

c. The use within this state of tangible personal property by the manufacturer thereof, as building materials, supplies, or equipment, in the performance of construction contracts in Iowa, shall, for the purpose of this

subchapter, be construed as a sale at retail of tangible personal property by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to the manufacturer of the fabrication or production of the tangible personal property.

2. A tax of five percent is imposed upon the sales price of the sale or furnishing of gas, electricity, water, heat, pay television service, and communication service, including the sales price from such sales by any municipal corporation or joint water utility furnishing gas, electricity, water, heat, pay television service, and communication service to the public in its proprietary capacity, except as otherwise provided in this subchapter, when sold at retail in the state to consumers or users.

3. A tax of five percent is imposed upon the sales price of all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions. A tax of five percent is imposed on the sales price of an entry fee or like charge imposed solely for the privilege of participating in an activity at a place of amusement, fair, or athletic event unless the sales price of tickets or admissions charges for observing the same activity are taxable under this subchapter. A tax of five percent is imposed upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

4. A tax of five percent is imposed upon the sales price derived from the operation of all forms of amusement devices and games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, operated or conducted within the state, the tax to be collected from the operator in the same manner as for the collection of taxes upon the sales price of tickets or admission as provided in this section. Nothing in this subsection shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

The tax imposed under this subsection covers the total amount from the operation of games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, and musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on the total amount from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of amusement, and generally upon the sales price from any source of amusement operated for profit, not specified in this section, and upon the sales price from which tax is not collected for tickets or admission, but tax shall not be imposed upon any activity exempt from sales tax under section 423.3, subsection 78. Every person receiving any sales price from the sources described in this section is subject to all provisions of this subchapter relating to retail sales tax and other provisions of this chapter as applicable.

5. There is imposed a tax of five percent upon the sales price from the furnishing of services as defined in section 423.1.

6. The sales price of any of the following enumerated services is subject to the tax imposed by subsection 5: alteration and garment repair; armored car; vehicle repair; battery, tire, and allied; investment counseling; service charges of all financial institutions; barber and beauty; boat repair; vehicle wash and wax; campgrounds; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dating services; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug, carpet, and upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; gun and camera repair; house and building moving; household appliance, television, and radio repair; janitorial and building maintenance or cleaning; jewelry and watch repair; lawn care, landscaping, and tree trimming and removal; limousine service, including driver; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pay television; pet grooming; pipe fitting and plumbing; wood preparation; executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state;

reflexology; security and detective services; sewage services for nonresidential commercial operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation; storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming pool cleaning and maintenance; tanning beds or salons; taxidermy services; telephone answering service; test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals; termite, bug, roach, and pest eradicators; tin and sheet metal repair; transportation service consisting of the rental of recreational vehicles or recreational boats, or the rental of motor vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days or less, or the rental of aircraft for a period of sixty days or less; Turkish baths, massage, and reducing salons, excluding services provided by massage therapists licensed under chapter 152C; water conditioning and softening; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables; wrecking service; wrecker and towing.

For the purposes of this subsection, "*financial institutions*" means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, savings and loan associations and savings banks organized under chapter 534, and credit unions organized under chapter 533.

7. *a.* A tax of five percent is imposed upon the sales price from the sales, furnishing, or service of solid waste collection and disposal service.

For purposes of this subsection, "*solid waste*" means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include auto hulks; street sweepings; ash; construction debris; mining waste; trees; tires; lead acid batteries; used oil; hazardous waste; animal waste used as fertilizer; earthen fill, boulders, or rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, or dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954.

A recycling facility that separates or processes recyclable materials and that reduces the volume of the waste by at least eighty-five percent is exempt from the tax imposed by this subsection if the waste exempted is collected and disposed of separately from other solid waste.

b. A person who transports solid waste generated by that person or another person without compensation shall pay the tax imposed by this subsection at the collection or disposal facility based on the disposal charge or tipping fee. However, the costs of a service or portion of a service to collect and manage recyclable materials separated from solid waste by the waste generator are exempt from the tax imposed by this subsection.

8. *a.* A tax of five percent is imposed upon the sales price from sales of bundled services contracts. For purposes of this subsection, a "*bundled services contract*" means an agreement providing for a retailer's performance of services, one or more of which is a taxable service enumerated in this section and one or more of which is not, in return for a consumer's or user's single payment for the performance of the services, with no separate statement to the consumer or user of what portion of that payment is attributable to any one service which is a part of the contract.

b. For purposes of the administration of the tax on bundled services contracts, the director may enter into agreements of limited duration with individual retailers, groups of retailers, or organizations representing

retailers of bundled services contracts. Such an agreement shall impose the tax rate only upon that portion of the sales price from a bundled services contract which is attributable to taxable services provided under the contract.

9. A tax of five percent is imposed upon the sales price from any mobile telecommunications service which this state is allowed to tax by 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.

10. Any person or that person's affiliate, which is a retailer in this state or a retailer maintaining a business in this state under this chapter, that enters into a contract with an agency of this state must register, collect, and remit Iowa sales tax under this chapter on all sales of tangible personal property and enumerated services. Every bid submitted and each contract executed by a state agency shall contain a certification by the bidder or contractor stating that the bidder or contractor is registered with the department and will collect and remit Iowa sales tax due under this chapter. In the certification, the bidder or contractor shall also acknowledge that the state agency may declare the contract or bid void if the certification is false. Fraudulent certification, by act or omission, may result in the state agency or its representative filing for damages for breach of contract.

For the purposes of this subsection, the following definitions apply:

a. "Affiliate" means any entity to which any of the following applies:

- (1) Directly, indirectly, or constructively controls another entity.
- (2) Is directly, indirectly, or constructively controlled by another entity.
- (3) Is subject to the control of a common entity. A common entity is one which owns directly or individually more than ten percent of the voting securities of the entity.

b. "State agency" means an authority, board, commission, department, instrumentality, or other administrative office or unit of this state, or any other state entity reported in the Iowa comprehensive annual financial report, including public institutions of higher education.

c. "Voting security" means a security to which any of the following applies:

- (1) Confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the entity.
- (2) Is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.
- (3) Is a general partnership interest.

11. All revenues arising under the operation of the provisions of this section shall be deposited into the general fund of the state.

12. All taxes collected under this chapter by a retailer or any individual are deemed to be held in trust for the state of Iowa.

2003 Acts, 1st Ex, ch 2, §95, 205; 2004 Acts, ch 1073, §24, 25; 2005 Acts, ch 140, §5, 18, 43

Footnotes

Local sales and services tax, § 423B.5 et seq.

Former § 423.2 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.3 Exemptions.

There is exempted from the provisions of this subchapter and from the computation of the amount of tax imposed by it the following:

1. The sales price from sales of tangible personal property and services furnished which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.
2. The sales price of sales for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with the furnishing of taxable services except for sales, other than leases or rentals, which are sales of machinery, equipment, attachments, and replacement parts specifically enumerated in subsection 37 and used in the manner described in subsection 37 or the purchase of tangible personal property, the leasing or rental of which is exempted from tax by subsection 49.
3. The sales price of agricultural breeding livestock and domesticated fowl.
4. The sales price of commercial fertilizer.
5. *a.* The sales price of agricultural limestone, herbicide, pesticide, insecticide, including adjuvants, surfactants, and other products directly related to the application enhancement of those products, food, medication, or agricultural drain tile, including installation of agricultural drain tile, any of which are to be used in disease control, weed control, insect control, or health promotion of plants or livestock produced as part of agricultural production for market.
b. The following enumerated materials associated with the installation of agricultural drain tile which is exempt pursuant to paragraph "a" shall also be exempt under paragraph "a":
 - (1) Tile intakes.
 - (2) Outlet pipes and guards.
 - (3) Aluminum and gabion structures.
 - (4) Erosion control fabric.
 - (5) Water control structures.
 - (6) Miscellaneous tile fittings.

6. The sales price of tangible personal property which will be consumed as fuel in creating heat, power, or steam for grain drying, or for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, or for use in cultivation of agricultural products by aquaculture, or in implements of husbandry engaged in agricultural production.

7. The sales price of services furnished by specialized flying implements of husbandry used for agricultural aerial spraying.

8. The sales price exclusive of services of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if the following conditions are met:

a. The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

b. The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in the production of agricultural products.

Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, are not eligible for this exemption.

9. The sales price of wood chips, sawdust, hay, straw, paper, or other materials used for bedding in the production of agricultural livestock or fowl.

10. The sales price of gas, electricity, water, or heat to be used in implements of husbandry engaged in agricultural production.

11. The sales price exclusive of services of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production, aquaculture production, or the production of flowering, ornamental, or vegetable plants.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in livestock or dairy production, aquaculture production, or the production of flowering, ornamental, or vegetable plants.

12. The sales price, exclusive of services, from sales of irrigation equipment used in farming operations.

13. The sales price from the sale or rental of irrigation equipment, whether installed above or below ground, to a contractor or farmer if the equipment will be primarily used in agricultural operations.

14. The sales price from the sales of horses, commonly known as draft horses, when purchased for use and so used as draft horses.

15. The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production.
16. The sales price from the sale of feed and feed supplements and additives when used for consumption by farm deer or bison.
17. The sales price of all goods, wares, or merchandise, or services, used for educational purposes sold to any private nonprofit educational institution in this state. For the purpose of this subsection, "*educational institution*" means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution and the curriculum must include basic courses which are offered every year. "*Educational institution*" includes an institution primarily functioning as a library.
18. The sales price of tangible personal property sold, or of services furnished, to the following nonprofit corporations:
- a. Residential care facilities and intermediate care facilities for persons with mental retardation and residential care facilities for persons with mental illness licensed by the department of inspections and appeals under chapter 135C.
 - b. Residential facilities licensed by the department of human services pursuant to chapter 237, other than those maintained by individuals as defined in section 237.1, subsection 7.
 - c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for persons with mental retardation and other persons with developmental disabilities and adult day care services approved for reimbursement by the state department of human services.
 - d. Community mental health centers accredited by the department of human services pursuant to chapter 225C.
 - e. Community health centers as defined in 42 U.S.C. § 254(c) and migrant health centers as defined in 42 U.S.C. § 254(b).
19. The sales price of tangible personal property sold to a nonprofit organization which was organized for the purpose of lending the tangible personal property to the general public for use by them for nonprofit purposes.
20. The sales price of tangible personal property sold, or of services furnished, to nonprofit legal aid organizations.
21. The sales price of goods, wares, or merchandise, or of services, used for educational, scientific, historic preservation, or aesthetic purpose sold to a nonprofit private museum.
22. The sales price from sales of goods, wares, or merchandise, or from services furnished, to a nonprofit private art center to be used in the operation of the art center.
23. The sales price of tangible personal property sold, or of services furnished, by a fair organized under chapter 174.
24. The sales price from services furnished by the notification center established pursuant to section 480.3, and the vendor selected pursuant to section 480.3 to provide the notification service.

25. The sales price of food and beverages sold for human consumption by a nonprofit organization which principally promotes a food or beverage product for human consumption produced, grown, or raised in this state and whose income is exempt from federal taxation under section 501(c) of the Internal Revenue Code.
26. The sales price of tangible personal property sold, or of services furnished, to a statewide nonprofit organ procurement organization, as defined in section 142C.2.
27. The sales price of tangible personal property sold, or of services furnished, to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital.
28. The sales price of tangible personal property sold, or of services furnished, to a freestanding nonprofit hospice facility which operates a hospice program as defined in 42 C.F.R., ch. IV, § 418.3, which property or services are to be used in the hospice program.
29. The sales price of all goods, wares, or merchandise sold, or of services furnished, which are used in the fulfillment of a written construction contract with a nonprofit hospital licensed pursuant to chapter 135B if all of the following apply:
- a.* The sales and delivery of the goods, wares, or merchandise, or the services furnished occurred between July 1, 1998, and December 31, 2001.
 - b.* The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.
 - c.* The sales or services were purchased by a contractor as the agent for the hospital or were purchased directly by the hospital.
30. The sales price of livestock ear tags sold by a nonprofit organization whose income is exempt from federal taxation under section 501(c)(6) of the Internal Revenue Code where the proceeds are used in bovine research programs selected or approved by such organization.
31. The sales price of goods, wares, or merchandise sold to and of services furnished, and used for public purposes sold to a tax-certifying or tax-levying body of the state or a governmental subdivision of the state, including regional transit systems, as defined in section 324A.1, the state board of regents, department of human services, state department of transportation, any municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except any of the following:
- a.* The sales price of goods, wares, or merchandise sold to, or of services furnished, and used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, heat, pay television service, or communication service to the general public.
 - b.* The sales price of furnishing of sewage services to a county or municipality on behalf of nonresidential commercial operations.
 - c.* The furnishing of solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality.

The exemption provided by this subsection shall also apply to all such sales of goods, wares, or merchandise or of services furnished and subject to use tax.

32. The sales price of tangible personal property sold, or of services furnished, by a county or city. This

exemption does not apply to any of the following:

a. The tax specifically imposed under section 423.2 on the sales price from sales or furnishing of gas, electricity, water, heat, pay television service, or communication service to the public by a municipal corporation in its proprietary capacity.

b. The sale or furnishing of solid waste collection and disposal service to nonresidential commercial operations.

c. The sale or furnishing of sewage service for nonresidential commercial operations.

d. Fees paid to cities and counties for the privilege of participating in any athletic sports.

33. *a.* The sales price of mementos and other items relating to Iowa history and historic sites, the general assembly, and the state capitol, sold by the legislative services agency and its legislative information office on the premises of property under the control of the legislative council, at the state capitol, and on other state property.

b. The legislative services agency is not a retailer under this chapter and the sale of items or provision of services by the legislative services agency is not a retail sale under this chapter and is exempt from the sales tax.

34. The sales price from sales of mementos and other items relating to Iowa history and historic sites by the department of cultural affairs on the premises of property under its control and at the state capitol.

35. The sales price from sales or services furnished by the state fair organized under chapter 173.

36. The sales price from sales of tangible personal property or of the sale or furnishing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state if the other state provides a similar reciprocal exemption for this state and political subdivision of this state.

37. The sales price of services on or connected with new construction, reconstruction, alteration, expansion, remodeling, or the services of a general building contractor, architect, or engineer. The exemption in this subsection also applies to the sales price on the lease or rental of all machinery, equipment, and replacement parts directly and primarily used by owners, contractors, subcontractors, and builders for new construction, reconstruction, alteration, expansion, or remodeling of real property or structures and of all machinery, equipment, and replacement parts which improve the performance, safety, operation, or efficiency of the machinery, equipment, and replacement parts so used.

38. The sales price from the sale of building materials, supplies, or equipment sold to rural water districts organized under chapter 504 as provided in chapter 357A and used for the construction of facilities of a rural water district.

39. The sales price from "*casual sales*".

"*Casual sales*" means:

a. Sales of tangible personal property, or the furnishing of services, of a nonrecurring nature, by the owner, if the seller, at the time of the sale, is not engaged for profit in the business of selling tangible personal property or services taxed under section 423.2.

b. The sale of all or substantially all of the tangible personal property or services held or used by a seller in the course of the seller's trade or business for which the seller is required to hold a sales tax permit when the

seller sells or otherwise transfers the trade or business to another person who shall engage in a similar trade or business.

The exemption under this subsection does not apply to vehicles subject to registration, aircraft, or commercial or pleasure watercraft or water vessels.

40. The sales price from the sale of automotive fluids to a retailer to be used either in providing a service which includes the installation or application of the fluids in or on a motor vehicle, which service is subject to section 423.2, subsection 6, or to be installed in or applied to a motor vehicle which the retailer intends to sell, which sale is subject to section 423.26. For purposes of this subsection, automotive fluids are all those which are refined, manufactured, or otherwise processed and packaged for sale prior to their installation in or application to a motor vehicle. They include but are not limited to motor oil and other lubricants, hydraulic fluids, brake fluid, transmission fluid, sealants, undercoatings, antifreeze, and gasoline additives.

41. The sales price from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard, or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing of such media and the charge for the viewing is subject to taxation under this subchapter or is subject to use tax.

b. The lessee broadcasts the contents of such media for public viewing or listening.

42. The sales price from the sale of tangible personal property consisting of advertising material including paper to a person in Iowa if that person or that person's agent will, subsequent to the sale, send that advertising material outside this state and the material is subsequently used solely outside of Iowa. For the purpose of this subsection, "*advertising material*" means any brochure, catalog, leaflet, flyer, order form, return envelope, or similar item used to promote sales of property or services.

43. The sales price from the sale of property or of services performed on property which the retailer transfers to a carrier for shipment to a point outside of Iowa, places in the United States mail or parcel post directed to a point outside of Iowa, or transports to a point outside of Iowa by means of the retailer's own vehicles, and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption shall not apply if the purchaser, consumer, or their agent, other than a carrier, takes physical possession of the property in Iowa.

44. The sales price from the sale of wine which is shipped from outside Iowa and which meets the requirements for sales and use tax exemption pursuant to section 123.187.

45. The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping paper, twine, bag, bottle, shipping case, or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing.

46. The sales price from sales or rentals to a printer or publisher of the following: acetate; anti-halation backing; antistatic spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper;

masks; masters; mats; mat service; metal toner; models and modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, and paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; ph-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and pasteups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; veloxes; wood mounts; and any other items used in a like capacity to any of the above enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies which are not enumerated in this subsection are excluded from the exemption. "Printer" means that portion of a person's business engaged in printing that completes a finished product for ultimate sale at retail or means that portion of a person's business used to complete a finished printed packaging material used to package a product for ultimate sale at retail. "Printer" does not mean an in-house printer who prints or copyrights its own materials.

47. a. The sales price from the sale or rental of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment if such items are any of the following:

- (1) Directly and primarily used in processing by a manufacturer.
- (2) Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.
- (3) Directly and primarily used in research and development of new products or processes of processing.
- (4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.
- (5) Directly and primarily used in recycling or reprocessing of waste products.
- (6) Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government.

b. The sales price from the sale of fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph "a", subparagraph (1), (2), (3), (5), or (6).

c. The sales price from the sale or rental of the following shall not be exempt from the tax imposed by this subchapter:

- (1) Hand tools.
- (2) Point-of-sale equipment and computers.
- (3) Industrial machinery, equipment, and computers, including pollution-control equipment within the scope of section 427A.1, subsection 1, paragraphs "h" and "i".
- (4) Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

d. As used in this subsection:

(1) "*Commercial enterprise*" includes businesses and manufacturers conducted for profit and centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations.

(2) "*Financial institution*" means as defined in section 527.2.

(3) "*Insurance company*" means an insurer organized or operating under chapter 508, 514, 515, 518, 518A, 519, or 520, or authorized to do business in Iowa as an insurer or an insurance producer under chapter 522B.

(4) "*Manufacturer*" means as defined in section 428.20, but also includes contract manufacturers. A contract manufacturer is a manufacturer that otherwise falls within the definition of manufacturer under section 428.20, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities.

(5) "*Processing*" means a series of operations in which materials are manufactured, refined, purified, created, combined, or transformed by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes but is not limited to refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; and construction of packaging and shipping devices, placement into shipping containers or any type of shipping devices or medium, and the movement of materials, components, or products until shipment from the processor.

(6) "*Receipt or producing of raw materials*" means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, the receipt or producing of raw materials is deemed to occur immediately following the severance of the raw materials from the real estate.

48. The sales price from the furnishing of the design and installation of new industrial machinery or equipment, including electrical and electronic installation.

49. The sales price from the sale of carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services and the lease or rental of tangible personal property when used by a manufacturer of food products to produce marketable food products for human consumption, including but not limited to treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture.

50. The sales price of sales of electricity, steam, or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail.

51. The sales price of tangible personal property sold for processing. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that the property will, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail; or for generating electric current; or the property is a

chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing tangible personal property which is intended to be sold ultimately at retail or consumed in the maintenance or repair of fabric or clothing, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides is a retail sale for purposes of the processing exemption set out in this subsection and in subsection 50.

52. The sales price from the sale of argon and other similar gases to be used in the manufacturing process.

53. The sales price from the sale of electricity to water companies assessed for property tax pursuant to sections 428.24, 428.26, and 428.28 which is used solely for the purpose of pumping water from a river or well.

54. The sales price from the sale of wind energy conversion property to be used as an electric power source and the sale of the materials used to manufacture, install, or construct wind energy conversion property used or to be used as an electric power source.

For purposes of this subsection, "*wind energy conversion property*" means any device, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, which converts wind energy to a form of usable energy.

55. The sales price from the sales of newspapers, free newspapers, or shoppers guides and the printing and publishing of such newspapers and shoppers guides, and envelopes for advertising.

56. The sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed and the sales price from the sales of ethanol blended gasoline, as defined in section 452A.2.

57. The sales price from all sales of food and food ingredients. However, as used in this subsection, "*food*" does not include alcoholic beverages, candy, dietary supplements, food sold through vending machines, prepared food, soft drinks, and tobacco.

For the purposes of this subsection:

a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients:

(1) A vitamin.

(2) A mineral.

(3) An herb or other botanical.

(4) An amino acid.

(5) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(6) A concentrate, metabolite, constituent, extract, or combination of any of the ingredients in subparagraphs (1) through (5) that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.

d. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

e. "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment, other than food which would be qualified for exemption under subsection 58 if purchased with a coupon described in subsection 58.

f. "Prepared food" means any of following:

(1) Food sold in a heated state or heated by the seller, including food sold by a caterer.

(2) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(3) "*Prepared food*", for the purposes of this paragraph, does not include food that is any of the following:

(a) Only cut, repackaged, or pasteurized by the seller.

(b) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the United States food and drug administration in chapter 3, part 401.11 of its food code, so as to prevent foodborne illnesses.

(c) Bakery items sold by the seller which baked them. The words "*bakery items*" includes but is not limited to breads, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(d) Food sold without eating utensils provided by the seller in an unheated state as a single item which is priced by weight or volume.

(4) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport food.

g. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "*Soft drinks*" does not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

h. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

58. The sales price from the sale of items purchased with coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. § 2011 et seq.

59. In transactions in which tangible personal property is traded toward the sales price of other tangible personal property, that portion of the sales price which is not payable in money to the retailer is exempted from the taxable amount if the following conditions are met:

a. The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

b. The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

60. The sales price from the sale or rental of prescription drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, and other medical devices intended for human use or consumption.

For the purposes of this subsection:

a. "*Drug*" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages, which is any of the following:

(1) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplement to any of them.

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

(3) Intended to affect the structure or any function of the body.

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

(1) Can withstand repeated use.

(2) Is primarily and customarily used to serve a medical purpose.

(3) Generally is not useful to a person in the absence of illness or injury.

(4) Is not worn in or on the body.

(5) Is for home use only.

(6) Is prescribed by a practitioner.

c. "*Mobility enhancing equipment*" means equipment, including repair and replacement parts, but does not include durable medical equipment, to which all of the following apply:

(1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle.

(2) Is not generally used by persons with normal mobility.

(3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(4) Is prescribed by a practitioner.

d. "*Other medical device*" means equipment or a supply that is not a drug, durable medical equipment, mobility enhancing equipment, or prosthetic device. "*Other medical devices*" includes, but is not limited to, ostomy, urological, and tracheostomy supplies, diabetic testing materials, hypodermic syringes and needles, anesthesia trays, biopsy trays and biopsy needles, cannula systems, catheter trays and invasive catheters,

fistula sets, irrigation solutions, intravenous administering solutions and stopcocks, myelogram trays, small vein infusion kits, spinal puncture trays, and venous blood sets intended to be dispensed for human use with or without a prescription to an ultimate user.

e. "*Practitioner*" means a practitioner as defined in section 155A.3, or a person licensed to prescribe drugs.

f. "*Prescription*" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a practitioner.

g. "*Prescription drug*" means a drug intended to be dispensed to an ultimate user pursuant to a prescription drug order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.

h. "*Prosthetic device*" means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to do any of the following:

- (1) Artificially replace a missing portion of the body.
- (2) Prevent or correct physical deformity or malfunction.
- (3) Support a weak or deformed portion of the body.

"*Prosthetic device*" includes, but is not limited to, orthopedic or orthotic devices, ostomy equipment, urological equipment, tracheostomy equipment, and intraocular lenses.

i. "*Ultimate user*" means an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed, or prescribed.

61. The sales price from services furnished by aerial commercial and charter transportation services.

62. The sales price from the sale of raffle tickets for a raffle licensed pursuant to section 99B.5.

63. The sales price from the sale of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in chapter 99B.

64. The sales price from the sale of a modular home, as defined in section 435.1, to the extent of the portion of the purchase price of the modular home which is not attributable to the cost of the tangible personal property used in the processing of the modular home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the modular home is forty percent.

65. The sales price from charges paid to a provider for access to on-line computer services. For purposes of this subsection, "*on-line computer service*" means a service that provides or enables computer access by multiple users to the internet or to other information made available through a computer server.

66. The sales price from the sale or rental of information services. "*Information services*" means every business activity, process, or function by which a seller or its agent accumulates, prepares, organizes, or conveys data, facts, knowledge, procedures, and like services to a buyer or its agent of such information through any tangible or intangible medium. Information accumulated, prepared, or organized for a buyer or its agent is an information service even though it may incorporate preexisting components of data or other

information. *"Information services"* includes, but is not limited to, database files, mailing lists, subscription files, market research, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, and scouting reports, or other similar items.

67. The sales price of a sale at retail if the substance of the transaction is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics.

68. *a.* The sales price from the sale of an article of clothing designed to be worn on or about the human body if all of the following apply:

(1) The sales price of the article is less than one hundred dollars.

(2) The sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Saturday.

b. This subsection does not apply to any of the following:

(1) Sport or recreational equipment and protective equipment.

(2) Clothing accessories or equipment.

(3) The rental of clothing.

c. For purposes of this subsection:

(1) *"Clothing"* means all human wearing apparel suitable for general use. *"Clothing"* includes, but is not limited to the following: aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers (children and adults, including disposable diapers); earmuffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoelaces; slippers; sneakers; socks and stockings; steel-toed shoes; underwear; uniforms, athletic and nonathletic; and wedding apparel.

"Clothing" does not include the following: belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies (including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles); and sewing materials that become part of clothing (including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers).

(2) *"Clothing accessories or equipment"* means incidental items worn on the person or in conjunction with clothing. *"Clothing accessories or equipment"* includes, but is not limited to, the following: briefcases; cosmetics; hair notions (including, but not limited to, barrettes, hair bows, and hair nets); handbags; handkerchiefs; jewelry; sunglasses, nonprescription; umbrellas; wallets; watches; and wigs and hairpieces.

(3) *"Protective equipment"* means items for human wear and designed as protection for the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. *"Protective equipment"* includes, but is not limited to, the following: breathing masks; clean room apparel and equipment; ear and hearing protectors; face shields; hard hats; helmets; paint or dust respirators; protective gloves; safety glasses and goggles; safety belts; tool belts; and welders gloves and masks.

(4) *"Sport or recreational equipment"* means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. *"Sport or recreational equipment"*

includes, but is not limited to, the following: ballet and tap shoes; cleated or spiked athletic shoes; gloves (including, but not limited to, baseball, bowling, boxing, hockey, and golf); goggles; hand and elbow guards; life preservers and vests; mouth guards; roller and ice skates; shin guards; shoulder pads; ski boots; waders; and wetsuits and fins.

69. The sales price from charges paid for the delivery of electricity or natural gas if the sale or furnishing of the electricity or natural gas or its use is exempt from the tax on sales prices imposed under this subchapter or from the use tax imposed under subchapter III.

69A. The sales price from surcharges paid for E911 service and wireless E911 service pursuant to chapter 34A.

70. The sales price of delivery charges. This exemption does not apply to the delivery of electric energy or natural gas.

71. The sales price from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

72. The sales price from the sales of special fuel for diesel engines consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such a river.

73. The sales price from sales of vehicles subject to registration or subject only to the issuance of a certificate of title and sales of aircraft subject to registration under section 328.20.

74. The sales price from the sale of aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

75. The sales price from the sale or rental of aircraft; the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the sales price of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, "*aircraft*" means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

76. The sales price from the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the sales price of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, "*aircraft*" means aircraft used in nonscheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

77. The sales price from the sale of aircraft to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs "a", "b", and "c" are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

78. The sales price from sales or rental of tangible personal property, or services rendered by any entity where the profits from the sales or rental of the tangible personal property, or services rendered are used by or donated to a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a government entity, or a nonprofit private educational institution, and where the entire proceeds from the sales, rental, or services are expended for any of the following purposes:

a. Educational.

b. Religious.

c. Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add to or to improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

This exemption does not apply to the sales price from games of skill, games of chance, raffles, and bingo games as defined in chapter 99B. This exemption is disallowed on the amount of the sales price only to the extent the profits from the sales, rental, or services are not used by or donated to the appropriate entity and expended for educational, religious, or charitable purposes.

79. The sales price from the sale or rental of tangible personal property or from services furnished to a recognized community action agency as provided in section 216A.93 to be used for the purposes of the agency.

80. a. For purposes of this subsection, "*designated exempt entity*" means an entity which is designated in section 423.4, subsection 1.

b. If a contractor, subcontractor, or builder is to use building materials, supplies, and equipment in the performance of a construction contract with a designated exempt entity, the person shall purchase such items of tangible personal property without liability for the tax if such property will be used in the performance of the construction contract and a purchasing agent authorization letter and an exemption certificate, issued by the designated exempt entity, are presented to the retailer.

c. Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the tax shall not be due when materials are withdrawn from inventory for use in construction performed for a designated exempt entity if an exemption certificate is received from such entity.

d. Tax shall not apply to tangible personal property purchased and consumed by a manufacturer as building materials, supplies, or equipment in the performance of a construction contract for a designated exempt entity, if a purchasing agent authorization letter and an exemption certificate are received from such entity and presented to a retailer.

81. The sales price from the sales of lottery tickets or shares pursuant to chapter 99G.

82. a. The sales price from the sale or rental of core-making, mold-making, and sand-handling machinery and equipment, including replacement parts, directly and primarily used in the mold-making process by a foundry.

b. The sales price from the sale of fuel used in creating heat, power, steam, or for generating electric current, or from the sale of electricity, consumed by core-making, mold-making, and sand-handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

c. The sales price from the furnishing of the design and installation, including electrical and electronic installation, of core-making, mold-making, and sand-handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

83. The sales price from noncustomer point of sale or noncustomer automated teller machine access or service charges assessed by a financial institution. For purposes of this subsection, "*financial institution*" means the same as defined in section 527.2.

84. a. Subject to paragraph "b", the sales price from the sale or furnishing of metered gas, electricity, and fuel, including propane and heating oil, to residential customers which is used to provide energy for residential dwellings and units of apartment and condominium complexes used for human occupancy.

b. The exemption in this subsection shall be phased in by means of a reduction in the tax rate as follows:

(1) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale or furnishing of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2004, through December 31, 2004, the rate of tax is two percent of the sales price.

(2) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale or furnishing of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2005, through December 31, 2005, the rate of tax is one percent of the sales price.

(3) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2006, the rate of tax is zero percent of the sales price.

c. The exemption in this subsection does not apply to local option sales and services tax imposed pursuant to chapters 423B and 423E.

85. The sales price from the sale of the following items: self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

86. The sales price from services performed on a vessel if all of the following apply:

a. The vessel is a licensed vessel under the laws of the United States coast guard.

b. The vessel is not moored or tied to a physical location in this state.

c. The service is used to repair or restore a defect in the vessel.

d. The vessel is engaged in interstate commerce and will continue in interstate commerce once the repairs or restoration is completed.

e. The vessel is in navigable water that borders the eastern boundary of this state.

87. The sales price from the sales of toys to a nonprofit organization exempt from federal income tax under section 501 of the Internal Revenue Code that purchases the toys from donations collected by the nonprofit organization and distributes the toys to children at no cost.

88. The sales price from the sale of building materials, supplies, goods, wares, or merchandise sold to a nonprofit Iowa affiliate of a nonprofit international organization whose primary activity is the promotion of the construction, remodeling, or rehabilitation of one-family or two-family dwellings for use by low-income families and where the building materials, supplies, goods, wares, or merchandise are used in the construction, remodeling, or rehabilitation of such dwellings.

2003 Acts, 1st Ex, ch 2, §96, 205; 2004 Acts, ch 1022, §4; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1073, §26, 27; 2004 Acts, ch 1086, §105; 2004 Acts, ch 1133, §1; 2004 Acts, ch 1175, §320, 394; 2005 Acts, ch 71, §1; 2005 Acts, ch 134, §1; 2005 Acts, ch 140, §611, 16, 30, 4446, 72, 73

Former § 423.3 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, §151, 205

2005 amendments to subsections 2, 37, and 49 take effect June 3, 2005, and apply retroactively to July 1, 2004; 2005 Acts, ch 140, §16

2005 amendment to subsection 5 takes effect June 3, 2005, and applies retroactively to January 1, 1998; limitations on total refunds; filing deadline; proration of refund amounts; 2005 Acts, ch 140, §72, 73

423.4 Refunds.

1. A private nonprofit educational institution in this state, nonprofit Iowa affiliate of a nonprofit international organization whose primary activity is the promotion of the construction, remodeling, or rehabilitation of one-family or two-family dwellings for low-income families, nonprofit private museum in this state, tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which do not have earnings going to the benefit of an equity investor or stockholder, may make application to the department for the refund of the sales or use tax upon the sales price of all sales of goods, wares, or merchandise, or from services furnished to a contractor, used in the fulfillment of a written contract with the state of Iowa, any political subdivision of the state, or a division, board, commission, agency, or instrumentality of the state or a political subdivision, a private nonprofit educational institution in this state, a nonprofit Iowa affiliate described in this subsection, or a nonprofit private museum in this state if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, is devoted to educational uses, becomes part of a low-income one-family or two-family dwelling in the state, or becomes a nonprofit private museum; except goods, wares, or merchandise, or services furnished which are used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public or in connection with the operation of a municipal pay television system; and except goods, wares, and merchandise used in the performance of a contract for a "project" under chapter 419 as defined in that chapter other than goods, wares, or merchandise used in the performance of a contract for a "project" under chapter 419 for which a bond issue was approved by a municipality prior to July 1, 1968, or for which the goods, wares, or merchandise becomes an integral part of the project under contract and at the completion of the project becomes public property or is devoted to educational uses.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares, or merchandise, or services furnished and used in the performance of such contract, and upon

which sales or use tax has been paid, and shall file such forms with the governmental unit, private nonprofit educational institution, nonprofit Iowa affiliate, or nonprofit private museum which has made any written contract for performance by the contractor. The forms shall be filed by the contractor with the governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum before final settlement is made.

b. Such governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum shall, not more than one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares, or merchandise, or services furnished, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum in the amount of the sales or use tax which has been paid to the state of Iowa under the contract.

Refunds authorized under this subsection shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

c. Any contractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition shall be liable for the payment of the tax and any applicable penalty and interest.

2. The refund of sales and use tax paid on transportation construction projects let by the state department of transportation is subject to the special provisions of this subsection.

a. A contractor awarded a contract for a transportation construction project is considered the consumer of all building materials, building supplies, and equipment and shall pay sales tax to the supplier or remit consumer use tax directly to the department.

b. The contractor is not required to file information with the state department of transportation stating the amount of goods, wares, or merchandise, or services rendered, furnished, or performed and used in the performance of the contract or the amount of sales or use tax paid.

c. The state department of transportation shall file a refund claim based on a formula that considers the following:

(1) The quantity of material to complete the contract, and quantities of items of work.

(2) The estimated cost of these materials included in the items of work, and the state sales or use tax to be paid on the tax rate in effect in section 423.2. The quantity of materials shall be determined after each letting based on the contract quantities of all items of work let to contract. The quantity of individual component materials required for each item shall be determined and maintained in a database. The total quantities of materials shall be determined by multiplying the quantities of component materials for each contract item of work by the total quantities of each contract item for each letting. Where variances exist in the cost of materials, the lowest cost shall be used as the base cost.

d. Only the state sales or use tax is refundable. Local option taxes paid by the contractor are not refundable.

3. A relief agency may apply to the director for refund of the amount of sales or use tax imposed and paid upon sales to it of any goods, wares, merchandise, or services furnished, used for free distribution to the poor and needy.

a. The refunds may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department, and filed within the time as the director shall provide by rule, the relief agency shall report to the department the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services furnished, used for free distribution to the poor and needy.

(2) On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

(3) The relief agency must prove to the satisfaction of the director that the person making the sales has included the amount thereof in the computation of the sales price of such person and that such person has paid the tax levied by this subchapter or subchapter III, based upon such computation of the sales price.

b. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the relief agency.

4. A person in possession of a renewable energy tax credit certificate issued pursuant to chapter 476C may apply to the director for refund of the amount of sales or use tax imposed and paid upon purchases made by the applicant.

a. The refunds may be obtained only in the following manner and under the following conditions:

(1) On forms furnished by the department and filed by January 31 after the end of the calendar year in which the tax credit certificate is to be applied, the applicant shall report to the department the total amount of sales and use tax paid during the reporting period on purchases made by the applicant.

(2) The applicant shall separately list the amounts of sales and use tax paid during the reporting period.

(3) If required by the department, the applicant shall prove that the person making the sales has included the amount thereof in the computation of the sales price of such person and that such person has paid the tax levied by this subchapter or subchapter III, based upon such computation of the sales price.

(4) The applicant shall provide the tax credit certificates issued pursuant to chapter 476C to the department with the forms required by this paragraph "*a*".

b. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the applicant for an amount not greater than the amount of tax credits issued in tax credit certificates pursuant to chapter 476C.

5. *a.* For purposes of this subsection:

(1) "*Automobile racetrack facility*" means a sanctioned automobile racetrack facility located as part of a racetrack and entertainment complex, including any museum attached to or included in the racetrack facility but excluding any restaurant, and which facility is located, on a maximum of two hundred thirty-two acres, in a city with a population of at least fourteen thousand five hundred but not more than sixteen thousand five hundred residents, which city is located in a county with a population of at least thirty-five thousand but not more than forty thousand residents and where the construction on the racetrack facility commenced not later than July 1, 2006, and the cost of the construction upon completion was at least thirty-five million dollars.

(2) "*Change of control*" means any of the following:

(a) Any change in the ownership of the original or any subsequent legal entity that is the owner or operator of the automobile racetrack facility such that at least sixty percent of the equity interests in the legal entity cease to be owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both.

(b) The original owners of the legal entity that is the owner or operator of the automobile racetrack facility shall collectively cease to own more than fifty percent of the voting equity interests of such legal entity or shall otherwise cease to have effective control of such legal entity.

(3) "*Iowa corporation*" means a corporation incorporated under the laws of Iowa where at least sixty percent of the corporation's equity interests are owned by individuals who are residents of Iowa.

(4) "*Owner or operator*" means a for-profit legal entity where at least sixty percent of its equity interests are owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both and that is the owner or operator of an automobile racetrack facility and is primarily a promoter of motor vehicle races.

(5) "*Population*" means the population based upon the 2000 certified federal census.

b. The owner or operator of an automobile racetrack facility may apply to the department for a rebate of sales tax imposed and collected by retailers upon sales of any goods, wares, merchandise, or services furnished to purchasers at the automobile racetrack facility.

c. The rebate may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department within the time period provided by the department by rule, which time period shall not be longer than quarterly.

(2) The owner or operator shall provide information as deemed necessary by the department.

(3) The transactions for which sales tax was collected and the rebate is sought occurred on or after January 1, 2006, but before January 1, 2016. However, not more than twelve million five hundred thousand dollars in total rebates shall be provided pursuant to this subsection.

(4) Notwithstanding subparagraph (3), the rebate of sales tax shall cease for transactions occurring on or after the date of the sale or other transfer, whether voluntarily or involuntarily, of the automobile racetrack facility to a party other than the original owner of the facility or upon a change of control of such facility.

(5) The automobile racetrack facility has not received or shall not receive any grants under the community attraction and tourism program pursuant to chapter 15F, subchapter II, or the vision Iowa program pursuant to chapter 15F, subchapter III.

d. To assist the department in determining the amount of the rebate, the owner or operator shall identify to the department retailers located at the automobile racetrack facility who will be collecting sales tax. The department shall verify such identity and ensure that all proper permits have been issued. For purposes of this subsection, advance ticket and admissions sales shall be considered occurring at the automobile racetrack facility regardless of where the transactions actually occur.

e. Upon determining that the conditions and requirements of this subsection and the department are met, the department shall issue a warrant to the owner or operator in the amount equal to the amount claimed and verified by the department.

f. Only the state sales tax is subject to rebate. Any local option taxes paid and collected shall not be subject to rebate under this subsection.

g. This subsection is repealed June 30, 2016, or thirty days following the date on which twelve million five hundred thousand dollars in total rebates have been provided, or thirty days following the date on which rebates cease as provided in paragraph "c", subparagraph (4), whichever is the earliest.

2003 Acts, 1st Ex, ch 2, §97, 205; 2005 Acts, ch 110, §2; 2005 Acts, ch 134, §2; 2005 Acts, ch 160, §4, 14

Former § 423.4 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

Department of economic development and department of revenue to report to general assembly by January 15, 2008, regarding sales tax rebate program pilot project provided in subsection 5; 2005 Acts, ch 110, §3

423.5 Imposition of tax.

An excise tax at the rate of five percent of the purchase price or installed purchase price is imposed on the following:

1. The use in this state of tangible personal property as defined in section 423.1, including aircraft subject to registration under section 328.20, purchased for use in this state. For the purposes of this subchapter, the furnishing or use of the following services is also treated as the use of tangible personal property: optional service or warranty contracts, except residential service contracts regulated under chapter 523C, vulcanizing, recapping, or retreading services, engraving, photography, retouching, printing, or binding services, and communication service when furnished or delivered to consumers or users within this state.
2. The use of manufactured housing in this state, on the purchase price if the manufactured housing is sold in the form of tangible personal property or on the installed purchase price if the manufactured housing is sold in the form of realty.
3. The use of leased vehicles, on the amount subject to tax as calculated pursuant to section 423.27.
4. Purchases of tangible personal property made from the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by this section. Services purchased from the same source or sources shall be subject to the service tax imposed by this subchapter and apply to the user of the services.
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 used in this state.
6. The excise tax is imposed upon every person using the property within this state until the tax has been paid directly to the county treasurer, the state department of transportation, a retailer, or the department. This tax is imposed on every person using the services or the product of the services in this state until the user has paid the tax either to an Iowa use tax permit holder or to the department.
7. For the purpose of the proper administration of the use tax and to prevent its evasion, evidence that tangible personal property was sold by any person for delivery in this state shall be prima facie evidence that such tangible personal property was sold for use in this state.
8. Any person or that person's affiliate, which is a retailer in this state or a retailer maintaining a business in this state under this chapter, that enters into a contract with an agency of this state must register, collect, and remit Iowa use tax under this chapter on all sales of tangible personal property and enumerated services. Every bid submitted and each contract executed by a state agency shall contain a certification by the bidder or contractor stating that the bidder or contractor is registered with the department and will collect and remit Iowa use tax due under this chapter. In the certification, the bidder or contractor shall also acknowledge that the state agency may declare the contract or bid void if the certification is false. Fraudulent certification, by act or omission, may result in the state agency or its representative filing for damages for breach of contract.

For the purposes of this subsection, "*affiliate*", "*state agency*", and "*voting security*" mean the same as

defined in section 423.2, subsection 10.

2003 Acts, 1st Ex, ch 2, §98, 205; 2005 Acts, ch 140, §47

Former § 423.5 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.6 Exemptions.

The use in this state of the following tangible personal property and services is exempted from the tax imposed by this subchapter:

1. Tangible personal property and enumerated services, the sales price from the sale of which are required to be included in the measure of the sales tax, if that tax has been paid to the department or the retailer. This exemption does not include vehicles subject to registration or subject only to the issuance of a certificate of title.
2. The sale of tangible personal property or the furnishing of services in the regular course of business.
3. Property used in processing. The use of property in processing within the meaning of this subsection shall mean and include any of the following:
 - a. Any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, and containers used in the collection, recovery, or return of empty beverage containers subject to chapter 455C.
 - b. Fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.
 - c. Chemicals, solvents, sorbents, or reagents, which are directly used and are consumed, dissipated, or depleted in processing tangible personal property which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product.
 - d. The distribution to the public of free newspapers or shoppers guides shall be deemed a retail sale for purposes of the processing exemption in this subsection.
4. All articles of tangible personal property brought into the state of Iowa by a nonresident individual for the individual's use or enjoyment while within the state.
5. Services exempt from taxation by the provisions of section 423.3.
6. Tangible personal property or services the sales price of which is exempt from the sales tax under section 423.3, except subsections 39 and 73, as it relates to the sale, but not the lease or rental, of vehicles subject to registration or subject only to the issuance of a certificate of title and as it relates to aircraft subject to registration under section 328.20.
7. Advertisement and promotional material and matter, seed catalogs, envelopes for same, and other similar material temporarily stored in this state which are acquired outside of Iowa and which, subsequent to being brought into this state, are sent outside of Iowa, either singly or physically attached to other tangible personal property sent outside of Iowa.
8. Vehicles, as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, except such vehicles subject to registration which are designed primarily for carrying persons, when purchased for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or

interstate transportation.

9. Tangible personal property which, by means of fabrication, compounding, or manufacturing, becomes an integral part of vehicles, as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Vehicles subject to registration which are designed primarily for carrying persons are excluded from this subsection.

10. Vehicles subject to registration which are transferred from a business or individual conducting a business within this state as a sole proprietorship, partnership, or limited liability company to a corporation formed by the sole proprietorship, partnership, or limited liability company for the purpose of continuing the business when all of the stock of the corporation so formed is owned by the sole proprietor and the sole proprietor's spouse, by all the partners in the case of a partnership, or by all the members in the case of a limited liability company. This exemption is equally available where the vehicles subject to registration are transferred from a corporation to a sole proprietorship, partnership, or limited liability company formed by that corporation for the purpose of continuing the business when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

This exemption also applies where the vehicles subject to registration are transferred from a corporation as part of the liquidation of the corporation to its stockholders if within three months of such transfer the stockholders retransfer those vehicles subject to registration to a sole proprietorship, partnership, or limited liability company for the purpose of continuing the business of the corporation when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

11. Vehicles subject to registration which are transferred from a corporation that is primarily engaged in the business of leasing vehicles subject to registration to a corporation that is primarily engaged in the business of leasing vehicles subject to registration when the transferor and transferee corporations are part of the same controlled group for federal income tax purposes.

12. Vehicles registered or operated under chapter 326 and used substantially in interstate commerce, section 423.5, subsection 7, notwithstanding. For purposes of this subsection, "*substantially in interstate commerce*" means that a minimum of twenty-five percent of the miles operated by the vehicle accrues in states other than Iowa. This subsection applies only to vehicles which are registered for a gross weight of thirteen tons or more.

For purposes of this subsection, trailers and semitrailers registered or operated under chapter 326 are deemed to be used substantially in interstate commerce and to be registered for a gross weight of thirteen tons or more.

For the purposes of this subsection, if a vehicle meets the requirement that twenty-five percent of the miles operated accrues in states other than Iowa in each year of the first four-year period of operation, the exemption from use tax shall continue until the vehicle is sold or transferred. If the vehicle is found to have not met the exemption requirements or the exemption was revoked, the value of the vehicle upon which the use tax shall be imposed is the book or market value, whichever is less, at the time the exemption requirements were not met or the exemption was revoked.

13. Mobile homes and manufactured housing the use of which has previously been subject to the tax imposed under this subchapter and for which that tax has been paid.

14. Mobile homes to the extent of the portion of the purchase price of the mobile home which is not attributable to the cost of the tangible personal property used in the processing of the mobile home, and manufactured housing to the extent of the purchase price or the installed purchase price of the manufactured housing which is not attributable to the cost of the tangible personal property used in the processing of the

manufactured housing. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the mobile home is forty percent and the portion of the purchase price or installed purchase price which is not attributable to the cost of the tangible personal property used in the processing of the manufactured housing is forty percent.

15. Tangible personal property used or to be used as a ship, barge, or waterborne vessel which is used or to be used primarily in or for the transportation of property or cargo for hire on the rivers bordering the state or as materials or parts of such ship, barge, or waterborne vessel.

16. Vehicles subject to registration in any state when purchased for rental or registered and titled by a motor vehicle dealer licensed pursuant to chapter 322 for rental use, and held for rental for a period of one hundred twenty days or more and actually rented for periods of sixty days or less by a person regularly engaged in the business of renting vehicles including, but not limited to, motor vehicle dealers licensed pursuant to chapter 322 who rent automobiles to users, if the rental of the vehicles is subject to taxation under chapter 423C.

17. Motor vehicles subject to registration which were registered and titled between July 1, 1982, and July 1, 1992, to a motor vehicle dealer licensed under chapter 322 and which were rented to a user as defined in section 423C.2 if the following occurred:

- a. The dealer kept the vehicle on the inventory of vehicles for sale at all times.
- b. The vehicle was to be immediately taken from the user of the vehicle when a buyer was found.
- c. The user was aware of this situation.

18. Vehicles subject to registration under chapter 321, with a gross vehicle weight rating of less than sixteen thousand pounds, excluding motorcycles and motorized bicycles, when purchased for lease and titled by the lessor licensed pursuant to chapter 321F and actually leased for a period of twelve months or more if the lease of the vehicle is subject to taxation under section 423.27.

A lessor may maintain the exemption from use tax under this subsection for a qualifying lease that terminates at the conclusion or prior to the contracted expiration date, if the lessor does not use the vehicle for any purpose other than for lease. Once the vehicle is used by the lessor for a purpose other than for lease, the exemption from use tax under this subsection no longer applies and, unless there is an exemption from the use tax, use tax is due on the fair market value of the vehicle determined at the time the lessor uses the vehicle for a purpose other than for lease, payable to the department. If the lessor holds the vehicle exclusively for sale, use tax is due and payable on the purchase price of the vehicle at the time of purchase pursuant to this subchapter.

19. Aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

20. Aircraft; tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, "*aircraft*" means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

21. Tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, "*aircraft*" means aircraft used in a nonscheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R., ch. 1, pt. 135.

22. Aircraft sold to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

- a. The aircraft is kept in the inventory of the dealer for sale at all times.
- b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.
- c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs "a", "b", and "c" are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

23. The use in this state of building materials, supplies, or equipment, the sale or use of which is not treated as a retail sale or a sale at retail under section 423.2, subsection 1.

24. Exempted from the purchase price of any vehicle subject to registration is:

a. The amount of any cash rebate which is provided by a motor vehicle manufacturer to the purchaser of the vehicle subject to registration so long as the rebate is applied to the purchase price of the vehicle.

b. That in transactions, except those subject to paragraph "c", in which tangible personal property is traded toward the purchase price of other tangible personal property the purchase price is only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

c. In a transaction between persons, neither of which is a retailer of vehicles subject to registration, in which a vehicle subject to registration is traded toward the purchase price of another vehicle subject to registration, the amount of the trade-in value allowed on the vehicle subject to registration traded.

2003 Acts, 1st Ex, ch 2, §99, 205

Former § 423.6 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.7 Title.

This subchapter shall be known and may be cited as the "*Uniform Sales and Use Tax Administration Act*".

2003 Acts, 1st Ex, ch 2, §100, 205

Former § 423.7 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.7A Motor vehicle lease tax. Repealed by 2003 Acts, 1st Ex, ch 2, § 151, 205. See § 423.27.

423.8 Legislative finding and intent.

The general assembly finds that Iowa should enter into an agreement with one or more states to simplify and

modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. It is the intent of the general assembly that entering into this agreement will lead to simplification and modernization of the sales and use tax law and not to the imposition of new taxes or an increase or decrease in the existing number of exemptions, unless such a result is unavoidable under the terms of the agreement.

2003 Acts, 1st Ex, ch 2, §101, 205

Former § 423.8 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.9 Authority to enter agreement and to represent the state.

The director is authorized and directed to enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

The director is further authorized to take other actions reasonably required to implement the provisions set forth in this chapter. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The director or the director's designee is authorized to be a member of the governing board established pursuant to the agreement and to represent Iowa before that body.

2003 Acts, 1st Ex, ch 2, §102, 205

Former § 423.9 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.10 Relationship to state law.

Entry into the agreement by the director does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, shall be by action of the general assembly.

2003 Acts, 1st Ex, ch 2, §103, 205

Former § 423.10 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.11 Agreement requirements.

The director shall not enter into the agreement unless the agreement requires each state to abide by the following requirements:

1. *Uniform state rate.* The agreement must set restrictions to achieve more uniform state rates through the following:

- a. Limiting the number of state rates.
- b. Limiting the application of maximums on the amount of state tax that is due on a transaction.
- c. Limiting the application of thresholds on the application of state tax.

2. *Uniform standards.* The agreement must establish uniform standards for the following:

- a. The sourcing of transactions to taxing jurisdictions.
 - b. The administration of exempt sales.
 - c. The allowances a seller can take for bad debts.
 - d. Sales and use tax returns and remittances.
3. *Uniform definitions.* The agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.
4. *Central registration.* The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all member states.
5. *No nexus attribution.* The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the member states must not be used as a factor in determining whether the seller has nexus with a state for any tax.
6. *Local sales and use taxes.* The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:
- a. Restricting variances between the state and local tax bases.
 - b. Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes must not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
 - c. Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.
 - d. Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.
7. *Monetary allowances.* The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.
8. *State compliance.* The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.
9. *Consumer privacy.* The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.
10. *Advisory councils.* The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

2003 Acts, 1st Ex, ch 2, §104, 205

Former § 423.11 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

Streamlined sales tax advisory council, see 2003 Acts, 1st Ex, ch 2, §204, 205

423.12 Limited binding and beneficial effect.

1. The agreement binds and inures only to the benefit of Iowa and the other member states. A person, other than a member state, is not an intended beneficiary of the agreement. Any benefit to a person other than a member state is established by the law of Iowa and not by the terms of the agreement.
2. A person shall not have any cause of action or defense under the agreement or by virtue of this state's entry into the agreement. A person may not challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.
3. A law of this state, or the application of it, shall not be declared invalid as to any such person or circumstance on the ground that the provision or application is inconsistent with the agreement.

2003 Acts, 1st Ex, ch 2, §105, 205

Former § 423.12 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.13 Purpose of this subchapter.

The purpose of this subchapter is to provide for the administration and collection of sales or use tax on the part of retailers who are not registered under the agreement and for the collection of use tax on the part of consumers who are obligated to pay that tax directly. Any application of the sections of this subchapter to retailers registered under the agreement is only by way of incorporation by reference into subchapter VI of this chapter.

2003 Acts, 1st Ex, ch 2, §106, 205

Former § 423.13 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.14 Sales and use tax collection.

1. *a.* Sales tax, other than that described in paragraph "c", shall be collected by sellers who are retailers or by their agents. Sellers or their agents shall, as far as practicable, add the sales tax, or the average equivalent thereof, to the sales price or charge, less trade-ins allowed and taken and when added such tax shall constitute a part of the sales price or charge, shall be a debt from consumer or user to seller or agent until paid, and shall be recoverable at law in the same manner as other debts.

b. In computing the tax to be collected as the result of any transaction, the tax computation must be carried to the third decimal place. Whenever the third decimal place is greater than four, the tax must be rounded up to the next whole cent; whenever the third decimal place is four or less, the tax must be rounded downward to a whole cent. Sellers may elect to compute the tax due on transactions on an item or invoice basis. Sellers are not required to use a bracket system.

c. The tax imposed upon those sales of motor vehicle fuel which are subject to tax and refund under chapter 452A shall be collected by the state treasurer by way of deduction from refunds otherwise allowable under that chapter. The treasurer shall transfer the amount of such deductions from the motor vehicle fuel tax fund to the special tax fund.

2. Use tax shall be collected in the following manner:

a. The tax upon the use of all vehicles subject to registration or subject only to the issuance of a certificate of

title or the tax upon the use of manufactured housing shall be collected by the county treasurer or the state department of transportation pursuant to sections 423.26 and 423.27. The county treasurer shall retain one dollar from each tax payment collected, to be credited to the county general fund.

b. The tax upon the use of all tangible personal property other than that enumerated in paragraph "*a*", which is sold by a seller who is a retailer maintaining a place of business in this state, or by such other retailer or agent as the director shall authorize pursuant to section 423.30, shall be collected by the retailer or agent and remitted to the department, pursuant to the provisions of paragraph "*e*", and sections 423.24, 423.29, 423.30, 423.32, and 423.33.

c. The tax upon the use of all tangible personal property not paid pursuant to paragraphs "*a*" and "*b*" shall be paid to the department directly by any person using the property within this state, pursuant to the provisions of section 423.34.

d. The tax imposed on the use of services enumerated in section 423.5 shall be collected, remitted, and paid to the department of revenue in the same manner as use tax on tangible personal property is collected, remitted, and paid under this subchapter.

e. All persons obligated by paragraph "*a*", "*b*", or "*d*", to collect use tax shall, as far as practicable, add that tax, or the average equivalent thereof, to the purchase price, less trade-ins allowed and taken, and when added the tax shall constitute a part of the purchase price. Use tax which this section requires to be collected by a retailer and any tax collected pursuant to this section by a retailer shall constitute a debt owed by the retailer to this state. Tax which must be paid directly to the department, pursuant to paragraph "*c*" or "*d*", is to be computed and added by the consumer or user to the purchase price in the same manner as this paragraph requires a seller to compute and add the tax. The tax shall be a debt from the consumer or user to the department until paid, and shall be recoverable at law in the same manner as other debts.

2003 Acts, 1st Ex, ch 2, §107, 205

Former § 423.14 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.15 General sourcing rules.

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. 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 Iowa sales tax applies to sales sourced to Iowa depends upon where the sale is consummated by delivery.

1. Sales, excluding leases or rentals, of products shall be sourced as follows:

a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

c. When paragraphs "a" and "b" do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

d. When paragraphs "a", "b", and "c" do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

e. When paragraphs "a", "b", "c", and "d" do not apply, including the circumstance where the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

2. The lease or rental of tangible personal property, other than property identified in subsection 3 or section 423.16, shall be sourced as follows:

a. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection 1. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 1.

c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

3. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection 1, notwithstanding the exclusion of lease or rental in that subsection. "*Transportation equipment*" means any of the following:

a. Locomotives or railcars that are utilized for the carriage of persons or property in interstate commerce.

b. Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that meet both of the following requirements:

(1) Are registered through the international registration plan.

(2) Are operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

c. Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

d. Containers designed for use on and component parts attached or secured on the items set forth in paragraphs "a" through "c".

2003 Acts, 1st Ex, ch 2, §108, 205; 2005 Acts, ch 140, §12

Former § 423.15 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.16 Transactions to which the general sourcing rules do not apply.

Section 423.15 does not apply to sales or use taxes levied on the following:

1. The retail sale or transfer of watercraft, modular homes, manufactured housing, or mobile homes, and the retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in section 423.15, subsection 3.
2. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in section 423.15, subsection 3, which shall be sourced in accordance with section 423.17.
3. Transactions to which the multiple points use exemption is applicable, which shall be sourced in accordance with section 423.18.
4. Transactions to which direct mail sourcing is applicable, which shall be sourced in accordance with section 423.19.
5. Telecommunications services, as set out in section 423.20, which shall be sourced in accordance with section 423.20, subsection 2.

2003 Acts, 1st Ex, ch 2, §109, 205

Former § 423.16 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.17 Sourcing rules for various types of leased or rented equipment which is not transportation equipment.

The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in section 423.15, subsection 3, shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.
2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of section 423.15, subsection 1.
3. This section does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

2003 Acts, 1st Ex, ch 2, §110, 205

Former § 423.17 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.18 Multiple points of use exemption forms.

A business purchaser that is not a holder of a direct pay tax permit pursuant to section 423.36 that knows at the time of purchasing a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with the purchase a "multiple points of use" or "MPU" exemption form disclosing this fact.

1. Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.
2. A purchaser delivering the MPU exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.
3. The MPU exemption form will remain in effect for all future sales by the seller to the purchaser except as to the subsequent sale's specific apportionment that is governed by the principle of subsection 2 and the facts existing at the time of the sale until it is revoked in writing.
4. A holder of a direct pay tax permit under section 423.36 shall not be required to deliver an MPU exemption form to the seller. A direct pay tax permit holder shall follow the provisions of subsection 2 in apportioning the tax due on a digital good, computer software delivered electronically, or service that will be concurrently available for use in more than one jurisdiction.

2003 Acts, 1st Ex, ch 2, §111, 205; 2005 Acts, ch 3, §68

Former § 423.18 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.19 Direct mail sourcing.

1. Notwithstanding section 423.15, a purchaser of direct mail that is not a holder of a direct pay tax permit pursuant to section 423.36 shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.
 - a. Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.
 - b. Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.
2. If the purchaser of direct mail does not have a direct pay tax permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection 1, the seller shall collect the tax according to section 423.15, subsection 1, paragraph "e". Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.
3. If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

2003 Acts, 1st Ex, ch 2, §112, 205

423.20 Telecommunications service sourcing.

1. As used in this section:

a. "Air-to-ground radiotelephone service" means a radio service, as that term is used in 47 C.F.R. § 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

b. "Call-by-call basis" means any method of charging for the telecommunications service where the price is measured by individual calls.

c. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

d. "Customer" means the person or entity that contracts with the seller of the telecommunications service. If the end user of the telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only applies for the purpose of sourcing sales of the telecommunications service under this section. *"Customer"* does not include a reseller of a telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

e. "Customer channel termination point" means the location where the customer either inputs or receives the communications.

f. "End user" means the person who utilizes the telecommunications service. In the case of an entity, *"end user"* means the individual who utilizes the service on behalf of the entity.

g. "Home service provider" means the same as that term is defined in the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 124(5).

h. "Mobile telecommunications service" means the same as that term is defined in the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 124(7).

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

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

k. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the amount declines with use in a known amount.

l. "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching

capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

m. "Service address" means one of the following:

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

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

(3) If the locations in subparagraphs (1) and (2) are not known, the "*service address*" means the location of the customer's place of primary use.

2. Sales of telecommunications services shall be sourced in the following manner:

a. Except for the defined telecommunications services in paragraph "*c*", the sale of telecommunications services sold on a call-by-call basis shall be sourced to one of the following:

(1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction.

(2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

b. Except for the defined telecommunications services in paragraph "*c*", a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

c. Sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications services other than air-to-ground radiotelephone service or prepaid calling service is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either of the following:

(a) The seller's telecommunications system.

(b) Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) A sale of prepaid calling service is sourced in accordance with section 423.15. However, in the case of a sale of mobile telecommunications services that is a prepaid telecommunications service, the rule provided in section 423.15, subsection 1, paragraph "*e*", shall include as an option the location associated with the mobile telephone number.

(4) A sale of a private telecommunications service is sourced as follows:

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

(b) Service where all customer termination points are located entirely within one jurisdiction or level of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

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

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

2003 Acts, 1st Ex, ch 2, §113, 205

423.21 Bad debt deductions.

1. For the purposes of this section, "*bad debt*" means an amount properly calculated pursuant to section 166 of the Internal Revenue Code then adjusted to exclude financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, and repossessed property.

2. In computing the amount of tax due, a seller may deduct bad debts from the total amount upon which the tax is calculated for any return. Any deduction taken or refund paid which is attributed to bad debts shall not include interest.

3. A seller may deduct bad debts on the return for the period during which the bad debt is written off as uncollectible in the seller's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a seller who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the seller's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the seller were required to file a federal income tax return.

4. If a deduction is taken for a bad debt and the seller subsequently collects the debt in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

5. A seller may obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable sales within the period allowed for refund claims by section 423.47. However, the period allowed for refund claims shall be measured from the due date of the return on which the bad debt could first be claimed.

6. For the purposes of computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payments made on a debt or account shall be applied first to the price of the property or service and tax thereon, proportionally, and secondly to interest, service charges, and any other charges.

2003 Acts, 1st Ex, ch 2, §114, 205

Former § 423.21 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.22 Taxation in another state.

If any person who causes tangible personal property to be brought into this state or who uses in this state services enumerated in section 423.2 has already paid a tax in another state in respect to the sale or use of the

property or the performance of the service, or an occupation tax in respect to the property or service, in an amount less than the tax imposed by subchapter II or III, the provisions of those subchapters shall apply, but at a rate measured by the difference only between the rate fixed by subchapter II or III and the rate by which the previous tax on the sale or use, or the occupation tax, was computed. If the tax imposed and paid in the other state is equal to or more than the tax imposed by those subchapters, then a tax is not due in this state on the personal property or service.

2003 Acts, 1st Ex, ch 2, §115, 205

Former § 423.22 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.23 Sellers' agreements.

Agreements between competing sellers, or the adoption of appropriate rules and regulations by organizations or associations of sellers to provide uniform methods for adding sales or use tax or the average equivalent thereof, and which do not involve price-fixing agreements otherwise unlawful, are expressly authorized and shall be held not in violation of chapter 553 or other antitrust laws of this state. The director shall cooperate with sellers, organizations, or associations in formulating agreements and rules.

2003 Acts, 1st Ex, ch 2, §116, 205

Former § 423.23 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.24 Absorbing tax prohibited.

A seller shall not advertise or hold out or state to the public or to any purchaser, consumer, or user, directly or indirectly, that the taxes or any parts thereof imposed by subchapter II or III will be assumed or absorbed by the seller or the taxes will not be added to the sales price of the property sold, or if added that the taxes or any part thereof will be refunded. Any person violating any of the provisions of this section within this state is guilty of a simple misdemeanor.

2003 Acts, 1st Ex, ch 2, §117, 205

Former § 423.24 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.24A Reimbursement for the primary road fund. Repealed by 2003 Acts, 1st Ex, ch 2, § 151, 205. See § 423.44.

423.25 Director's power to adopt rules.

The director shall have the power to adopt rules for adding the taxes imposed by subchapters II and III, or the average equivalents thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling the retailers to add and collect, as far as practicable, the amounts of those taxes.

2003 Acts, 1st Ex, ch 2, §118, 205

Former § 423.25 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.26 Vehicles subject to registration or only to the issuance of title manufactured housing.

The use tax imposed upon the use of vehicles subject to registration or subject only to the issuance of a certificate of title or imposed upon the use of manufactured housing shall be paid by the owner of the vehicle

or of the manufactured housing to the county treasurer or the state department of transportation from whom the registration receipt or certificate of title is obtained. A registration receipt for a vehicle subject to registration or certificate of title shall not be issued until the tax has been paid. The county treasurer or the state department of transportation shall require every applicant for a registration receipt for a vehicle subject to registration or certificate of title to supply information as the county treasurer or the director deems necessary as to the time of purchase, the purchase price, installed purchase price, and other information relative to the purchase of the vehicle or manufactured housing. On or before the tenth day of each month, the county treasurer or the state department of transportation shall remit to the department the amount of the taxes collected during the preceding month.

A person who willfully makes a false statement in regard to the purchase price of a vehicle subject to taxation under this section is guilty of a fraudulent practice. A person who willfully makes a false statement in regard to the purchase price of such a vehicle with the intent to evade the payment of tax shall be assessed a penalty of seventy-five percent of the amount of tax unpaid and required to be paid on the actual purchase price less trade-in allowance.

2003 Acts, 1st Ex, ch 2, §119, 205

Former § 423.26 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.27 Motor vehicle lease tax.

1. The use tax imposed upon the use of leased vehicles subject to registration under chapter 321, with gross vehicle weight ratings of less than sixteen thousand pounds, excluding motorcycles and motorized bicycles, which are leased by a lessor licensed pursuant to chapter 321F for a period of twelve months or more shall be paid by the owner of the vehicle to the county treasurer or state department of transportation from whom the registration receipt or certificate of title is obtained. A registration receipt for a vehicle subject to registration or issuance of a certificate of title shall not be issued until the tax is paid in the initial instance. Tax on the lease transaction that does not require titling or registration of the vehicle shall be remitted to the department. Tax and the reporting of tax due to the department shall be remitted on or before fifteen days from the last day of the month that the vehicle lease tax becomes due. Failure to timely report or remit any of the tax when due shall result in a penalty and interest being imposed on the tax due pursuant to section 423.40, subsection 1, and section 423.42, subsection 1.

2. The amount subject to tax shall be computed on each separate lease transaction by taking the total of the lease payments, plus the down payment, and excluding all of the following:

a. Title fee.

b. Registration fees.

c. Vehicle lease tax pursuant to this section.

d. Federal excise taxes attributable to the sale of the vehicle to the owner or to the lease of the vehicle by the owner.

e. Optional service or warranty contracts subject to tax pursuant to section 423.2, subsection 1.

f. Insurance.

g. Manufacturer's rebate.

h. Refundable deposit.

i. Finance charges, if any, on items listed in paragraphs "a" through "h".

If any or all of the items in paragraphs "a" through "i" are excluded from the taxable lease price, the owner shall maintain adequate records of the amounts of those items. If the parties to a lease enter into an agreement providing that the tax imposed under this statute is to be paid by the lessee or included in the monthly lease payments to be paid by the lessee, the total cost of the tax shall not be included in the computation of lease price for the purpose of taxation under this section. The county treasurer, the state department of transportation, or the department of revenue shall require every applicant for a registration receipt for a vehicle subject to tax under this section to supply information as the county treasurer or director deems necessary as to the date of the lease transaction, the lease price, and other information relative to the lease of the vehicle.

3. On or before the tenth day of each month, the county treasurer or the state department of transportation shall remit to the department the amount of the taxes collected during the preceding month.

4. If the lease is terminated prior to the termination date contained in the lease agreement, no refund shall be allowed for tax previously paid under this section, except as provided in section 322G.4.

2003 Acts, 1st Ex, ch 2, §120, 205

Former § 423.27 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, § 151, 205

423.28 Sales tax report deduction.

Motor vehicle or trailer dealers, in making their reports and returns to the department for the purpose of paying the sales tax, shall be permitted to deduct all sales prices from retail sales of vehicles subject to registration or subject only to the issuance of a certificate of title. Sales prices from sales of vehicles subject to registration or subject only to the issuance of a certificate of title are exempted from the sales tax, but, if required by the director, the sales prices shall be included in the returns made by motor vehicle or trailer dealers under subchapter II, and proper deductions taken pursuant to this section.

2003 Acts, 1st Ex, ch 2, §121, 205

423.29 Collections by sellers.

Every seller who is a retailer and who is making taxable sales of tangible personal property in Iowa shall, at the time of selling the property, collect the sales tax. Every seller who is a retailer maintaining a place of business in this state and selling tangible personal property for use in Iowa shall, at the time of making the sale, whether within or without the state, collect the use tax. Sellers required to collect sales or use tax shall give to any purchaser a receipt for the tax collected in the manner and form prescribed by the director.

Every seller who is a retailer furnishing taxable services in Iowa and every seller who is a retailer maintaining a place of business in this state and furnishing taxable services in Iowa or services outside Iowa if the product or result of the service is used in Iowa shall be subject to the provisions of the preceding paragraph.

2003 Acts, 1st Ex, ch 2, §122, 205

423.30 Foreign sellers not registered under the agreement.

The director may, upon application, authorize the collection of the use tax by any seller who is a retailer not maintaining a place of business within this state and not registered under the agreement, who, to the satisfaction of the director, furnishes adequate security to ensure collection and payment of the tax. Such

sellers shall be issued, without charge, permits to collect tax subject to any regulations which the director shall prescribe. When so authorized, it shall be the duty of foreign sellers to collect the tax upon all tangible personal property sold, to the retailer's knowledge, for use within this state, in the same manner and subject to the same requirements as a retailer maintaining a place of business within this state. The authority and permit may be canceled when, at any time, the director considers the security inadequate, or that tax can more effectively be collected from the person using property in this state.

The discretionary power granted in this section is extended to apply in the case of foreign retailers furnishing services enumerated in section 423.2.

2003 Acts, 1st Ex, ch 2, §123, 205

423.31 Filing of sales tax returns and payment of sales tax.

1. Each person subject to this section and section 423.36 and in accordance with the provisions of this section and section 423.36 shall, on or before the last day of the month following the close of each calendar quarter during which such person is or has become or ceased being subject to the provisions of this section and section 423.36, make, sign, and file a return for the calendar quarter in the form as may be required. Returns shall show information relating to sales prices including goods, wares, and services converted to the use of such person, the amounts of sales prices excluded and exempt from the tax, the amounts of sales prices subject to tax, a calculation of tax due, and any other information for the period covered by the return as may be required. Returns shall be signed by the retailer or the retailer's authorized agent and must be certified by the retailer to be correct in accordance with forms and rules prescribed by the director.
2. Persons required to file, or committed to file by reason of voluntary action or by order of the department, deposits of taxes due under this subchapter shall be entitled to take credit against the total quarterly amount of tax due such amount as shall have been deposited by such persons during that calendar quarter. The balance remaining due after such credit for deposits shall be entered on the return. However, such person may be granted an extension of time not exceeding thirty days for filing the quarterly return, upon a proper showing of necessity. If an extension is granted, such person shall have paid by the twentieth day of the month following the close of such quarter ninety percent of the estimated tax due.
3. The sales tax forms prescribed by the director shall be referred to as "retailers tax deposit". Deposit forms shall be signed by the retailer or the retailer's duly authorized agent, and shall be duly certified by the retailer or agent to be correct. The director may authorize incorporated banks and trust companies or other depositories authorized by law which are depositories or financial agents of the United States, or of this state, to receive any sales tax imposed under this chapter, in the manner, at the times, and under the conditions the director prescribes. The director shall prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.
4. Every retailer at the time of making any return required by this section shall compute and pay to the department the tax due for the preceding period. The tax on sales prices from the sale or rental of tangible personal property under a consumer rental purchase agreement as defined in section 537.3604, subsection 8, is payable in the tax period of receipt.
5. Upon making application and receiving approval from the director, a parent corporation and its affiliated corporations that make retail sales of tangible personal property or taxable enumerated services may make deposits and file a consolidated sales tax return for the affiliated group, pursuant to rules adopted by the director. A parent corporation and each affiliate corporation that files a consolidated return are jointly and severally liable for all tax, penalty, and interest found due for the tax period for which a consolidated return is filed or required to be filed.

A business required to file a consolidated sales tax return shall file a form entitled "schedule of consolidated

business locations" with its quarterly sales tax return that shows the taxpayer's consolidated permit number, the permit number for each Iowa business location, the state sales tax amount by business location, and the amount of state sales tax due on goods consumed that are not assigned to a specific business location. Consolidated quarterly sales tax returns that are not accompanied by the schedule of consolidated business locations form are considered incomplete and are subject to penalty under section 421.27.

6. If necessary or advisable in order to insure the payment of the tax, the director may require returns and payment of the tax to be made for other than quarterly periods, the provisions of this section or other provision to the contrary notwithstanding.

2003 Acts, 1st Ex, ch 2, §124, 205

423.32 Filing of use tax returns and payment of use tax.

1. A retailer maintaining a place of business in this state who is required to collect or a user who is required to pay the use tax or a foreign retailer authorized, pursuant to section 423.30, to collect the use tax, shall remit to the department the amount of tax on or before the last day of the month following each calendar quarterly period. However, a retailer who collects or owes more than fifteen hundred dollars in use taxes in a month shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or owed, with a deposit form for the month as prescribed by the director.

a. The deposit form is due on or before the twentieth day of the month following the month of collection, except a deposit is not required for the third month of the calendar quarter, and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. At that time, the retailer shall file with the department a return for the preceding quarterly period in the form prescribed by the director showing the purchase price of the tangible personal property sold by the retailer during the preceding quarterly period, the use of which is subject to the use tax imposed by this chapter, and other information the director deems necessary for the proper administration of the use tax.

b. The return shall be accompanied by a remittance of the use tax for the period covered by the return. If necessary in order to ensure payment to the state of the tax, the director may in any or all cases require returns and payments to be made for other than quarterly periods. The director, upon request and a proper showing of necessity, may grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed, in accordance with forms and rules prescribed by the director, by the retailer or the retailer's authorized agent, and shall be certified by the retailer or agent to be correct.

2. If it is reasonably expected, as determined by rules prescribed by the director, that a retailer's annual sales or use tax liability will not exceed one hundred twenty dollars for a calendar year, the retailer may request and the director may grant permission to the retailer, in lieu of the quarterly filing and remitting requirements set out elsewhere in this section, to file the return required by and remit the sales or use tax due under this section on a calendar-year basis. The return and tax are due and payable no later than January 31 following each calendar year in which the retailer carries on business.

3. The director, in cooperation with the department of management, may periodically change the filing and remittance thresholds by administrative rule if in the best interests of the state and taxpayer to do so.

2003 Acts, 1st Ex, ch 2, §125, 205

423.33 Liability of persons other than retailers for payment of sales or use tax.

1. *Liability of purchaser for sales tax.* If a purchaser fails to pay sales tax to the retailer required to collect the tax, then in addition to all of the rights, obligations, and remedies provided, the tax is payable by the

purchaser directly to the department, and sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 apply to the purchaser. For failure to pay, the retailer and purchaser are liable, unless the circumstances described in section 421.60, subsection 2, paragraph "m", or section 423.45, subsection 4, paragraph "b" or "e", or subsection 5, paragraph "c" or "e", are applicable.

2. *Immediate successor liability for sales or use tax.* If a retailer sells the retailer's business or stock of goods or quits the business, the retailer shall prepare a final return and pay all sales or use tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold a sufficient portion of the purchase price, in money or money's worth, to pay the amount of delinquent tax, interest, or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold the amount due from the purchase price as provided in this subsection, the immediate successor is personally liable for the payment of delinquent taxes, interest, and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "*immediate successor*" for purposes of this section. The department may waive the liability of the immediate successor under this subsection if the immediate successor exercised good faith in establishing the amount of the previous liability.

3. *Event sponsor's liability for sales tax.* A person sponsoring a flea market or a craft, antique, coin, or stamp show or similar event shall obtain from every retailer selling tangible personal property or taxable services at the event proof that the retailer possesses a valid sales tax permit or secure from the retailer a statement, taken in good faith, that property or services offered for sale are not subject to sales tax. Failure to do so renders a sponsor of the event liable for payment of any sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 apply to the sponsors. For purposes of this subsection, a person sponsoring a flea market or a craft, antique, coin, or stamp show or similar event does not include an organization which sponsors an event less than three times a year or the state fair or a fair as defined in section 174.1.

2003 Acts, 1st Ex, ch 2, §126, 205; 2005 Acts, ch 19, §55

423.34 Liability of user.

Any person who uses any property or services enumerated in section 423.2 upon which the use tax has not been paid, either to the county treasurer or to a retailer or direct to the department as required by this subchapter, shall be liable for the payment of tax, and shall on or before the last day of the month next succeeding each quarterly period pay the use tax upon all property or services used by the person during the preceding quarterly period in the manner and accompanied by such returns as the director shall prescribe. All of the provisions of sections 423.32 and 423.33 with reference to the returns and payments shall be applicable to the returns and payments required by this section.

2003 Acts, 1st Ex, ch 2, §127, 205

423.35 Posting of bond to secure payment.

The director may, when necessary and advisable in order to secure the collection of the sales or use tax, authorize any person subject to either tax, and any retailer required or authorized to collect those taxes pursuant to the provisions of section 423.14, to file with the department a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of any tax, interest, or penalties due or which may become due from such person. In lieu of a bond, securities approved by the director, in an amount which the director may prescribe, may be deposited with the department, which securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax, interest, or penalties due. Upon

the sale, the surplus, if any, above the amounts due under this chapter shall be returned to the person who deposited the securities.

2003 Acts, 1st Ex, ch 2, §128, 205

423.36 Permits required to collect sales or use tax applications revocation.

1. A person shall not engage in or transact business as a retailer making taxable sales of tangible personal property or furnishing services within this state or as a retailer making taxable sales of tangible personal property or furnishing services for use within this state, unless a permit has been issued to the retailer under this section, except as provided in subsection 6. Every person desiring to engage in or transact business as a retailer shall file with the department an application for a permit to collect sales or use tax. Every application for a sales or use tax permit shall be made upon a form prescribed by the director and shall set forth any information the director may require. The application shall be signed by an owner of the business if a natural person; in the case of a retailer which is an association or partnership, by a member or partner; and in the case of a retailer which is a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of the person's authority.

2. To collect sales or use tax, the applicant must have a permit for each place of business in the state of Iowa. The department may deny a permit to an applicant who is substantially delinquent in paying a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any delinquent tax, penalty, or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest.

3. The department shall grant and issue to each applicant a permit for each place of business in this state where sales or use tax is collected. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated or at a place of relocation within the state if the ownership remains the same.

If an applicant is making sales outside Iowa for use in this state or furnishing services outside Iowa, the product or result of which will be used in this state, that applicant shall be issued one use tax permit by the department applicable to these out-of-state sales or services.

4. Permits issued under this section are valid and effective until revoked by the department.

5. If the holder of a permit fails to comply with any of the provisions of this subchapter or of subchapter II or III or any order or rule of the department adopted under those subchapters or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the director may revoke the permit. The director shall send notice by mail to a permit holder informing that person of the director's intent to revoke the permit and of the permit holder's right to a hearing on the matter. If the permit holder petitions the director for a hearing on the proposed revocation, after giving ten days' notice of the time and place of the hearing in accordance with section 17A.18, subsection 3, the matter may be heard and a decision rendered. The director may restore permits after revocation. The director shall adopt rules setting forth the period of time a retailer must wait before a permit may be restored or a new permit may be issued. The waiting period shall not exceed ninety days from the date of the revocation of the permit.

6. Sellers who are not regularly engaged in selling at retail and do not have a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state,

county, district, or local fairs, carnivals, or the like, shall report and remit the sales tax on a temporary basis, under rules the director shall provide for the efficient collection of the sales tax. This subsection applies to sellers who are temporarily engaged in furnishing services.

Persons engaged in selling tangible personal property or furnishing services shall not be required to obtain or retain a sales tax permit for a place of business at which taxable sales of tangible personal property or taxable performance of services will not occur.

7. The provisions of subsection 1, dealing with the lawful right of a retailer to transact business, as applicable, apply to persons having receipts from furnishing services enumerated in section 423.2, except that a person holding a permit pursuant to subsection 1 shall not be required to obtain any separate sales tax permit for the purpose of engaging in business involving the services.

8. *a.* Except as provided in paragraph "*b*", purchasers, users, and consumers of tangible personal property or enumerated services taxed pursuant to subchapter II or III of this chapter or chapters 423B and 423E may be authorized, pursuant to rules adopted by the director, to remit tax owed directly to the department instead of the tax being collected and paid by the seller. To qualify for a direct pay tax permit, the purchaser, user, or consumer must accrue a tax liability of more than four thousand dollars in tax under subchapters II and III in a semimonthly period and make deposits and file returns pursuant to section 423.31. This authority shall not be granted or exercised except upon application to the director and then only after issuance by the director of a direct pay tax permit.

b. The granting of a direct pay tax permit is not authorized for any of the following:

(1) Taxes imposed on the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service.

(2) Taxes imposed under sections 423.26 and 423.27 and chapter 423C.

2003 Acts, 1st Ex, ch 2, §129, 205

423.37 Failure to file sales or use tax returns incorrect returns.

1. As soon as practicable after a return is filed and in any event within three years after the return is filed, the department shall examine it, assess and determine the tax due if the return is found to be incorrect, and give notice to the person liable for the tax of the assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

2. If a return required by this subchapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the department, the department shall determine the amount of tax due from information as the department may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by the person, stock on hand, or other factors. The department shall give notice of the determination to the person liable for the tax. The determination shall fix the tax unless the person against whom it is assessed shall, within sixty days after the giving of notice of the determination, apply to the director for a hearing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. At the hearing, evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the tax.

3. The three-year period of limitation provided in subsection 1 may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement shall stipulate the period of

extension and the tax period to which the extension applies. The agreement shall also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

2003 Acts, 1st Ex, ch 2, §130, 205

423.38 Judicial review.

1. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.
2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk a bond for the use of the respondent, with sureties approved by the clerk, in the amount of tax appealed from, conditioned that the petitioner shall perform the orders of the court.
3. An appeal may be taken by the taxpayer or the director to the supreme court of this state irrespective of the amount involved.

2003 Acts, ch 44, §114; 2003 Acts, 1st Ex, ch 2, §131, 205

Footnotes

Filing petition on appeal, R.C.P. 1.1803

423.39 Service of notices.

1. A notice authorized or required under this subchapter may be given by mailing the notice to the person for whom it is intended, addressed to that person at the address given in the last return filed by the person pursuant to this subchapter, or if no return has been filed, then to any address obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. Any period of time which is determined according to this subchapter by the giving of notice commences to run from the date of mailing of the notice.
2. The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty provided by this chapter.

2003 Acts, 1st Ex, ch 2, §132, 205

Footnotes

Lien of tax, see § 422.26

423.40 Penalties offenses limitation.

1. In addition to the sales or use tax or additional sales or use tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the sales or use tax or additional sales or use tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the semimonthly or monthly tax deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this subchapter. Unpaid penalties and interest may be enforced in the same manner as the taxes imposed by this chapter.

2. *a.* Any person who knowingly sells tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, or communication service at retail, or engages in the furnishing of services enumerated in section 423.2, in this state without procuring a permit to collect tax, as provided in section 423.36, or who violates section 423.24 and the officers of any corporation who so act are guilty of a serious misdemeanor.

b. A person who knowingly sells tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, or communication service at retail, or engages in the furnishing of services enumerated in section 423.2, in this state after the person's sales tax permit has been revoked and before it has been restored as provided in section 423.36, subsection 5, and the officers of any corporation who so act are guilty of an aggravated misdemeanor.

3. A person who willfully attempts in any manner to evade any tax imposed by this chapter or the payment of the tax or a person who makes or causes to be made a false or fraudulent semimonthly or monthly tax deposit form or return with intent to evade any tax imposed by subchapter II or III or the payment of the tax is guilty of a class "D" felony.

4. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this subchapter shall be prima facie evidence thereof.

5. A person required to pay sales or use tax, or to make, sign, or file a tax deposit form or return or supplemental return, who willfully makes a false or fraudulent tax deposit form or return, or willfully fails to pay at least ninety percent of the tax or willfully fails to make, sign, or file the tax deposit form or return, at the time required by law, is guilty of a fraudulent practice.

6. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

2003 Acts, 1st Ex, ch 2, § 133, 205

423.41 Books examination.

Every retailer required or authorized to collect taxes imposed by this chapter and every person using in this state tangible personal property, services, or the product of services shall keep records, receipts, invoices, and other pertinent papers as the director shall require, in the form that the director shall require, for as long as the director has the authority to examine and determine tax due. The director or any duly authorized agent of the department may examine the books, papers, records, and equipment of any person either selling tangible personal property or services or liable for the tax imposed by this chapter, and investigate the character of the business of any person in order to verify the accuracy of any return made, or if a return was not made by the person, ascertain and determine the amount due under this chapter. These books, papers, and records shall be made available within this state for examination upon reasonable notice when the director deems it advisable and so orders. The preceding requirements shall likewise apply to users and persons furnishing services enumerated in section 423.2.

2003 Acts, 1st Ex, ch 2, § 134, 205

423.42 Statutes applicable.

1. The director shall administer the taxes imposed by subchapters II and III in the same manner and subject to all the provisions of, and all of the powers, duties, authority, and restrictions contained in, section 422.25, subsection 4, section 422.30, and sections 422.67 through 422.75.

2. All the provisions of section 422.26 shall apply in respect to the taxes and penalties imposed by subchapters II and III and this subchapter, except that, as applied to any tax imposed by subchapters II and III, the lien provided in section 422.26 shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as provided in section 422.26. The requirements for recording shall, as applied to the taxes imposed by subchapters II and III, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director shall, upon being satisfied that such a situation exists, inform that person as to the amount of unpaid taxes due by such taxpayer under the provisions of subchapters II and III. The giving of this information under these circumstances shall not be deemed a violation of section 422.72 as applied to subchapters II and III.

2003 Acts, 1st Ex, ch 2, § 135, 205

423.43 Deposit of revenue appropriations.

Except as otherwise provided in section 312.2, subsection 14, all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to sections 423.26 and 423.27 shall be deposited and credited to the road use tax fund and shall be used exclusively for the construction, maintenance, and supervision of public highways.

1. Notwithstanding any provision of this section which provides that all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to sections 423.26 and 423.27 shall be deposited and credited to the road use tax fund, eighty percent of the revenues shall be deposited and credited as follows:

a. Twenty-five percent of all such revenue, up to a maximum of four million two hundred fifty thousand dollars per quarter, shall be deposited into and credited to the Iowa comprehensive petroleum underground storage tank fund created in section 455G.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes.

b. Any such revenues remaining shall be credited to the road use tax fund.

2. Notwithstanding any other provision of this section that provides that all revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.26 shall be deposited and credited to the road use tax fund, twenty percent of the revenues shall be credited and deposited as follows: one-half to the road use tax fund and one-half to the primary road fund to be used for the commercial and industrial highway network.

3. All other revenue arising under the operation of the use tax under subchapter III shall be credited to the general fund of the state.

2003 Acts, 1st Ex, ch 2, § 136, 205; 2005 Acts, ch 140, §13

Footnotes

Road use tax fund, §312.1

423.44 Reimbursement for primary road fund.

From moneys deposited into the road use tax fund, the department may credit to the primary road fund any amount of revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to sections 423.26 and 423.27 to the extent necessary to reimburse that fund

for the expenditures not otherwise eligible to be made from the primary road fund, which are made for repairing, improving, and maintaining bridges over the rivers bordering the state. Expenditures for those portions of bridges within adjacent states may be included when they are made pursuant to an agreement entered into under section 313.63, 313A.34, or 314.10.

2003 Acts, 1st Ex, ch 2, § 137, 205

423.45 Refunds exemption certificates.

1. If an amount of tax represented by a retailer to a consumer or user as constituting tax due is computed upon a sales price that is not taxable or the amount represented is in excess of the actual taxable amount and the amount represented is actually paid by the consumer or user to the retailer, the excess amount of tax paid shall be returned to the consumer or user upon notification to the retailer by the department that an excess payment exists.
2. If an amount of tax represented by a retailer to a consumer or user as constituting tax due is computed upon a sales price that is not taxable or the amount represented is in excess of the actual taxable amount and the amount represented is actually paid by the consumer or user to the retailer, the excess amount of tax paid shall be returned to the consumer or user upon proper notification to the retailer by the consumer or user that an excess payment exists. "*Proper*" notification is written notification which allows a retailer at least sixty days to respond and which contains enough information to allow a retailer to determine the validity of a consumer's or user's claim that an excess amount of tax has been paid. No cause of action shall accrue against a retailer for excess tax paid until sixty days after proper notice has been given the retailer by the consumer or user.
3. In the circumstances described in subsections 1 and 2, a retailer has the option to either return any excess amount of tax paid to a consumer or user, or to remit the amount which a consumer or user has paid to the retailer to the department.
4. *a.* The department shall issue or the seller may separately provide exemption certificates in the form prescribed by the director, including certificates not made of paper, which conform to the requirements of paragraph "*c*", to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to purchasers for a nontaxable purpose. The department shall also allow the use of exemption certificates for those circumstances in which a sale is taxable but the seller is not obligated to collect tax from the buyer.
- b.* The sales tax liability for all sales of tangible personal property and all sales of services is upon the seller and the purchaser unless the seller takes in good faith from the purchaser a valid exemption certificate stating under penalty of perjury that the purchase is for a nontaxable purpose and is not a retail sale as defined in section 423.1, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate pursuant to subsection 5. If the tangible personal property or services are purchased tax free pursuant to a valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department and sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 shall apply to the purchaser.
- c.* A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director.
- d.* A valid exemption certificate is taken in good faith by the seller when the seller has exercised that caution and diligence which honest persons of ordinary prudence would exercise in handling their own business affairs, and includes an honesty of intention and freedom from knowledge of circumstances which ought to put one upon inquiry as to the facts. In order for a seller to take a valid exemption certificate in good faith,

the seller must exercise reasonable prudence to determine the facts supporting the valid exemption certificate, and if any facts upon such certificate would lead a reasonable person to further inquiry, such inquiry must be made with an honest intent to discover the facts.

e. If the circumstances change and as a result the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner or the purchaser becomes obligated to pay the tax, the purchaser is liable solely for the taxes and shall remit the taxes directly to the department in accordance with this subsection.

5. *a.* The department shall issue or the seller may separately provide fuel exemption certificates in the form prescribed by the director.

b. For purposes of this subsection:

(1) "*Fuel*" includes gas, electricity, water, heat, steam, and any other tangible personal property consumed in creating heat, power, or steam.

(2) "*Fuel consumed in processing*" means fuel used or consumed for processing including grain drying, for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, for use in aquaculture production, or for generating electric current, or in implements of husbandry engaged in agricultural production.

(3) "*Fuel exemption certificate*" means an exemption certificate given by the purchaser under penalty of perjury to assist retailers in properly accounting for nontaxable sales of fuel consumed in processing.

(4) "*Substantial change*" means a change in the use or disposition of tangible personal property and services by the purchaser such that the purchaser pays less than ninety percent of the purchaser's actual sales tax liability. A change includes a misstatement of facts in an application made pursuant to paragraph "*d*" or in a fuel exemption certificate.

c. The seller may accept a completed fuel exemption certificate, as prepared by the purchaser, for three years unless the purchaser files a new completed exemption certificate. If the fuel is purchased tax free pursuant to a fuel exemption certificate which is taken by the seller, and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes, and shall remit the taxes directly to the department and sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 shall apply to the purchaser.

d. The purchaser may apply to the department for its review of the fuel exemption certificate. In this event, the department shall review the fuel exemption certificate within twelve months from the date of application and determine the correct amount of the exemption. If the amount determined by the department is different than the amount that the purchaser claims is exempt, the department shall promptly notify the purchaser of the determination. Failure of the department to make a determination within twelve months from the date of application shall constitute a determination that the fuel exemption certificate is correct as submitted. A determination of exemption by the department is final unless the purchaser appeals to the director for a revision of the determination within sixty days after the date of the notice of determination. The director shall grant a hearing, and upon the hearing, the director shall determine the correct exemption and notify the purchaser of the decision by mail. The decision of the director is final unless the purchaser seeks judicial review of the director's decision under section 423.38 within sixty days after the date of the notice of the director's decision. Unless there is a substantial change, the department shall not impose penalties pursuant to section 423.40 both retroactively to purchases made after the date of application and prospectively until the

department gives notice to the purchaser that a tax or additional tax is due, for failure to remit any tax due which is in excess of a determination made under this section. A determination made by the department pursuant to this subsection does not constitute an audit for purposes of section 423.37.

e. If the circumstances change and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department in accordance with paragraph "c".

f. The purchaser shall attach documentation to the fuel exemption certificate which is reasonably necessary to support the exemption for fuel consumed in processing. If the purchaser files a new exemption certificate with the seller, documentation shall not be required if the purchaser previously furnished the seller with this documentation and substantial change has not occurred since that documentation was furnished or if fuel consumed in processing is separately metered and billed by the seller.

6. Nothing in this section authorizes any cause of action by any person to recover sales or use taxes directly from the state or extends any person's time to seek a refund of sales or use taxes which have been collected and remitted to the state.

2003 Acts, 1st Ex, ch 2, § 138, 205

423.46 Rate and base changes.

The department shall make a reasonable effort to provide sellers with as much advance notice as practicable of a rate change and to notify sellers of legislative changes in the tax base and amendments to sales and use tax rules. Failure of a seller to receive notice or failure of this state to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for this state.

2003 Acts, 1st Ex, ch 2, § 139, 205

423.47 Refunds and credits.

If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, such amount shall be credited against any tax due, or to become due, on the books of the department from the person who made the erroneous payment, or such amount shall be refunded to such person by the department. A claim for refund or credit that has not been filed with the department within three years after the tax payment for which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall not be allowed by the director.

2003 Acts, 1st Ex, ch 2, § 140, 205

423.48 Responsibilities and rights of sellers registered under the agreement.

1. By registering under the agreement, the seller agrees to collect and remit sales and use taxes for all its taxable Iowa sales. Iowa's withdrawal from the agreement or revocation of its membership in the agreement shall not relieve a seller from its responsibility to remit taxes previously collected on behalf of this state.

2. The following provisions apply to any seller who registers under the agreement:

a. The seller may register on-line.

b. Registration under the agreement and the collection of Iowa sales and use taxes shall not be used as factors in determining whether the seller has nexus with Iowa for any tax.

c. If registered under the agreement with any other member state, the seller is considered to be registered in Iowa.

d. The seller is not required to pay registration fees or other charges.

e. A written signature from the seller is not required.

f. The seller may register by way of an agent. The agent's appointment shall be in writing and submitted to the department if requested by the department.

g. The seller may cancel its registration at any time under procedures adopted by the governing board established pursuant to the agreement. Cancellation does not relieve the seller of its liability for remitting any Iowa taxes collected.

3. The following additional responsibilities and rights apply to model sellers:

a. A model 1 seller's obligation to calculate, collect, and remit sales and use taxes shall be performed by its certified service provider, except for the seller's obligation to remit tax on its own purchases. As the seller's agent, the certified service provider is liable for its model 1 seller's sales and use tax due Iowa on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresents the types of items or services it sells or commits fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A model 1 seller is subject to audit for transactions not processed by the certified service provider. The director is authorized to perform a system check of the model 1 seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

b. A model 2 seller shall calculate the amount of tax due on a transaction by the use of a certified automated system, but shall collect and remit tax on its own sales. A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to this state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

c. A model 3 seller shall use its own proprietary automated system to calculate tax due and collect and remit tax on its own sales. A model 3 seller is liable for the failure of its proprietary automated system to meet the applicable performance standard.

2003 Acts, 1st Ex, ch 2, § 141, 205

423.49 Returns.

1. All model 1, 2, or 3 sellers are subject to all of the following return requirements:

a. The seller is required to file only one return per month for this state and for all taxing jurisdictions within this state.

b. The date for filing returns shall be determined under rules adopted by the director. However, in no case shall the return be due earlier than the twentieth day of the following month.

c. The director shall request additional information returns. These returns shall not be required more frequently than every six months.

2. Any registered seller which does not have a legal obligation to register in this state and is not a model 1, 2, or 3 seller is subject to all of the following return requirements:

- a.* The seller is required to file a return within one year of the month of initial registration and shall file a return on an annual basis in succeeding years.
- b.* In addition to the return required in paragraph "*a*", if the seller accumulates more than one thousand dollars in total state and local tax, the seller is required to file a return in the following month.
- c.* The format of the return and the due date of the initial return and the annual return shall be determined under rules adopted by the department.

2003 Acts, 1st Ex, ch 2, § 142, 205

423.50 Remittance of funds.

- 1. Only one remittance of tax per return is required except as provided in this subsection. Sellers that collect more than thirty thousand dollars in sales and use taxes for this state during the preceding calendar year shall be required to make additional remittances as required under rules adopted by the director. The filing of a return is not required with an additional remittance.
- 2. All remittances shall be remitted electronically.
- 3. Electronic payments may be made either by automated clearinghouse credit or automated clearinghouse debit. Any data accompanying a remittance must be formatted using uniform tax type and payment codes approved by the governing board established pursuant to the agreement. An alternative method for making same-day payments shall be determined under rules adopted by the director.
- 4. If a due date falls on a legal banking holiday in this state, the taxes are due on the succeeding business day.

2003 Acts, 1st Ex, ch 2, § 143, 205

423.51 Administration of exemptions.

- 1. The following provisions shall apply when a purchaser claims an exemption:
 - a.* The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the member states acting jointly.
 - b.* A purchaser is not required to provide a signature to claim an exemption from tax unless a paper certificate is used.
 - c.* The seller shall use the standard form for claiming an exemption electronically as adopted jointly by the member states.
 - d.* The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
 - e.* The department may authorize a system wherein the purchaser exempt from the payment of the tax is issued an identification number which shall be presented to the seller at the time of the sale.
 - f.* The seller shall maintain proper records of exempt transactions and provide them to the department when requested.

g. The department shall administer entity-based and use-based exemptions when practicable through a direct pay tax permit, an exemption certificate, or another means that does not burden sellers. For the purposes of this paragraph:

(1) An "*entity-based exemption*" is an exemption based on who purchases the product or who sells the product.

(2) A "*use-based exemption*" is an exemption based on the purchaser's use of the product.

2. Sellers that follow the requirements of this section are relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and that the purchaser is liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption.

2003 Acts, 1st Ex, ch 2, § 144, 205

423.52 Relief from liability for sellers and certified service providers.

Sellers and certified service providers are relieved from liability to this state or its local taxing jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by this state on tax rates, boundaries, or taxing jurisdiction assignments. If this state provides an address-based system for assigning taxing jurisdictions whether or not pursuant to the federal Mobile Telecommunications Sourcing Act, the director is not required to provide liability relief for errors resulting from reliance on the information provided by this state.

2003 Acts, 1st Ex, ch 2, § 145, 205

423.53 Bad debts and model 1 sellers.

A certified service provider may claim, on behalf of a model 1 seller, any bad debt deduction as provided in section 423.21. The certified service provider must credit or refund the full amount of any bad debt deduction or refund received to the seller.

2003 Acts, 1st Ex, ch 2, § 146, 205

423.54 Amnesty for registered sellers.

1. Subject to the limitations in subsections 2 through 6, the following provisions apply:

a. Amnesty is provided for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the agreement, provided the seller was not so registered in this state in the twelve-month period preceding the commencement of Iowa's participation in the agreement.

b. Amnesty precludes assessment of the seller for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in this state, provided registration occurs within twelve months of the commencement of Iowa's participation in the agreement.

c. Amnesty shall be provided to any seller lawfully registered under the agreement by any other member state prior to the date of the commencement of Iowa's participation in the agreement.

2. Amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved, including any related

administrative and judicial processes.

3. Amnesty is not available for sales or use taxes already paid or remitted or to taxes collected by the seller.
4. Amnesty is fully effective absent the seller's fraud or intentional misrepresentation of a material fact as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. The statute of limitations applicable to asserting a tax liability is tolled during this thirty-six month period.
5. Amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.
6. The director may allow amnesty on terms and conditions more favorable to a seller than the terms required by this section.

2003 Acts, 1st Ex, ch 2, § 147, 205

423.55 Databases.

The department shall provide and maintain databases required by the agreement for the benefit of sellers registered under the agreement.

2003 Acts, 1st Ex, ch 2, § 148, 205

423.56 Confidentiality and privacy protections under model 1.

1. As used in this section:

a. "Anonymous data" means information that does not identify a person.

b. "Confidential taxpayer information" means all information that is protected under this state's laws, rules, and privileges.

c. "Personally identifiable information" means information that identifies a person.

2. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

3. A certified service provider may perform its services in this state only if the certified service provider certifies that:

a. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected.

b. Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 sellers with respect to exempt purchasers.

c. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. This notice shall be satisfied by a written privacy policy statement accessible by the public on the official web site of the certified service provider.

d. Its collection, use, and retention of personally identifiable information is limited to that required by the

member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased.

e. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

4. The department shall provide public notification of its practices relating to the collection, use, and retention of personally identifiable information.

5. When any personally identifiable information that has been collected and retained by the department or certified service provider is no longer required for the purposes set forth in subsection 3, paragraph "d", that information shall no longer be retained by the department or certified service provider.

6. When personally identifiable information regarding an individual is retained by or on behalf of this state, this state shall provide reasonable access by the individual to the individual's own information in the state's possession and a right to correct any inaccurately recorded information.

7. This privacy policy is subject to enforcement by the department and the attorney general.

8. This state's laws and rules regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the agreement does not enlarge or limit the state's or department's authority to:

a. Conduct audits or other review as provided under the agreement and state law.

b. Provide records pursuant to its examination of public records law, disclosure laws of individual governmental agencies, or other regulations.

c. Prevent, consistent with state law, disclosures of confidential taxpayer information.

d. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the internal revenue service.

e. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

9. This privacy policy does not preclude the certification of a certified service provider whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the agreement.

2003 Acts, 1st Ex, ch 2, § 149, 205; 2005 Acts, ch 3, §69

423.57 Statutes applicable.

The director shall administer this subchapter as it relates to the taxes imposed in this chapter in the same manner and subject to all the provisions of, and all of the powers, duties, authority, and restrictions contained in sections 423.14, 423.15, 423.16, 423.17, 423.18, 423.19, 423.20, 423.21, 423.22, 423.23, 423.24, 423.25, 423.28, 423.29, 423.31, 423.32, 423.33, 423.34, 423.35, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42, section 423.43, subsection 3, and sections 423.45, 423.46, and 423.47.

2003 Acts, 1st Ex, ch 2, § 150, 205